GUACANAGARI
MONTEZUMA
GUATIMOTZIN
POWHATAN
POCAHONTAS
SAMOSET
MASSASOIT
KING PHILIP
UNCAS
TEDYUSKUNG

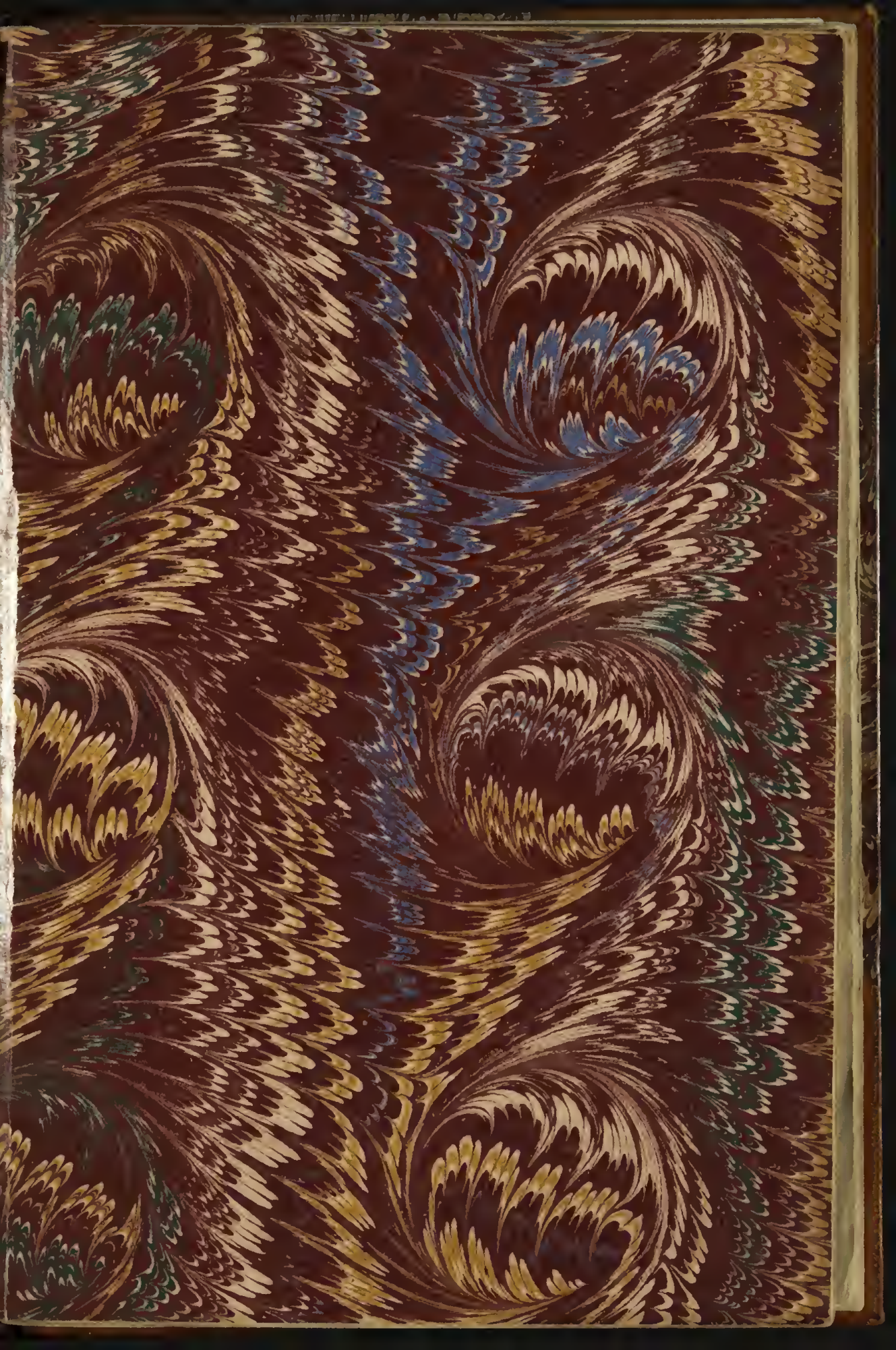
PONTIAC
CAPTAIN PIPE
LOGAN
CORNPLANTER
JOSEPH BRANT
RED JACKET
LITTLE TURTLE
TECUMSEH
OSCEOLA
SEQUOYA
SHABONEE

BLACK HAWK
KEOKUK
SACAGAWEA
BENITO JUAREZ
MANGUS
COLORADAS
LITTLE CROW
SITTING BULL
CHIEF JOSEPH
GERONIMO

TO PERPETUATE THE HISTORY AND DEVELOPMENT OF THE PEOPLE REPRESENTED BY THE ABOVE CHIEFS AND WISE MEN THIS COLLECTION HAS BEEN GATHERED BY THEIR FRIEND

EDWARD EVERETT AYER

AND PRESENTED BY HIM TO THE NEWBERRY LIBRARY 1911



Index.

1. Fenton, E. Claim ... 13p.

2. Crawford, S.J. In Re Sykins Bros... 4p.

3. Hall, H., Claim of Alexis Coquillard. 24p.

4 Mesplié, J. Supplemental Petition. 11p.

5 Mc Kee, R. In the Matter of House Bill No. 620... 15p

6. Black, S.M. vs. McCauley & Cavanaugh. 9p.

EDWARD FENLON'S CLAIM.

ARGUMENT

BEFORE THE

SECRETARY OF THE INTERIOR.

Beresford, Printer,
523 Seventh Street,
Washington, D. C.

FENLON'S CASE.

WASHINGTON, D. C.,
30*th November*, 1878.

To the Honorable THE SECRETARY OF THE INTERIOR:

The undersigned, Edward Fenlon, of Leavenworth, Kansas, desires to present to you for your action the following case:

I entered into a written contract, July 6, 1878, signed by Wm. M. Leeds, Acting Commissioner of Indian Affairs, for and in behalf of the United States and myself, a true copy of which contract is hereto attached and marked Exhibit "A."

By virtue of this contract I assume certain responsibilities and became vested with certain rights.

By Article I of this contract I agreed to transport "such goods and supplies of the Indian Department * * * as may be turned over to me for transportation."

By Article II of the contract "*these supplies shall be consingned* TO THEIR RESPECTIVE DESIGNATIONS, on bills of lading, * * * which bills of lading shall be receipted by me, * * * *and I shall be responsible for said supplies until they are delivered* ACCORDING TO CONSIGNMENT.

By Article VII of the contract it is provided "*that in case of failure* FOR ANY CAUSE, I shall fail to meet the requirements of this contract, *I and my sureties and my bond shall be charged.*"

By Article IX of the contract it is provided that "*payment*

shall be made 'for all transportation' performed under this contract * * * upon presentation to Office of Indian Affairs of the bills of lading named in Article II of the contract.

FACTS ARISING UNDER THIS CONTRACT.

I. Certain "goods and supplies of the Indian Department" were delivered to me under this contract at New York and other points, directed to the Cheyenne and Arrapahoe Agency, Indian Territory, and shipped to that point.

II. I receipted for such goods to be so delivered as addressed and as provided by contract. I was responsible for those goods and supplies "TILL DELIVERED ACCORDING TO CONSIGNMENT AT THE PLACE OF DESTINATION."

III. I did deliver those goods and supplies *at the place of destination*," and have presented to the Office of Indian Affairs the bills of lading named in Article II of the contract referred to.

The Hon., the Commissioner of Indian Affairs, refuses to pay me according to these "bills of lading," or to pass my account through his office for the following reasons:

He directed me by telegraph to turn these goods over to certain Indian trains at Wichita, Kansas, (that is a certain portion thereof, shown by the Exhibits hereto affixed, which Exhibits show all the correspondence and acts done under this contract of both parties in this controversy, shown by writing and telegrams,) which orders, as shown by the Exhibits, I declined to comply with for the reasons expressed in my telegrams and letters.

The following is the correspondence by letter and telegrams in the order of their dates, to which the special attention of the Secretary is respectfully called:

No. 1.

DARLINGTON, INDIAN TERRITORY, *Sept.* 7, 1878.

B. C. WILSON, *Esq.*,
Wichita, Kansas.

Should *medical stores* and *sorghum mill and fixtures* arrive, send them *at once*.

Very respectfully,
JNO. D. MILES,
U. S. Ind. Agt.

P. S.—We shall want about fifty thousand (50,000lb) pounds freight for our Indian train, to be loaded immediately after the "Sedgwick County Fair." Can we have it?
M.

No. 2.

DARLINGTON, INDIAN TERRITORY, *Sept.* 12, 1878.

B. C. WILSON, *Esq.*,
Wichita, Kansas.

I am in rect. of a telegram from the Hon. Comr. Ind. Affrs., dated 5th inst., in which he says that the Indian train will be paid a fair compensation for the supplies transported by them, and asking what quantity they will be likely to haul.

In this connection I would respectfully ask you to send me a reply to my letter of 7th inst., giving price per 100 lb that will be allowed the Indians for hauling. We are anxious that the Indians make about three trips, say 150,000 pounds.

Very respectfully,
JNO. D. MILES,
U. S. Ind. Agt.

No. 3.

[*Telegram.*]

WASHINGTON, D. C., *Sept.* 18, 1878.

To FENLON,

Leavenworth, Kansas.

Turn over to Agent Miles, at Wichita, such goods for Cheyenne and Arrapahoe Agency as he may demand to be transported by his Indian train.

WM. M. LEEDS,
Acting Commissioner.

No. 4.

LEAVENWORTH, *September* 18, 1878.

WM. LEEDS, ESQ.,

Acting Commissioner Indian Affairs,

Washington, D. C.

Sir: Your telegram of this date just received. Before receiving your telegram I had received a letter from Agent Miles, asking for freight for his train. Enclosed I hand you a copy of my letter to him.

Very respectfully,

E. FENLON.

No. 5.

LEAVENWORTH, *Sept.* 18, 1878.

JNO. D. MILES, ESQ.,

U. S. Indian Agent,

Cheyenne Agency.

Dear Sir: Mr. B. C. Wilson has forwarded me your letter in reference to freight for the Indian train. In reply I have to say that, having contracted with parties for the season's work, and advanced considerable money to parties to aid

them in getting up teams, for which advances they are still in debt to me, I cannot load the Indian train unless I have a large surplus of freight, which, from present appearances, is not at all likely. I do not understand why the Commissioner should telegraph you that the Indian train would be loaded, as no understanding of the kind has been made, and no request from him on the subject. My contract provides for nothing of the kind, and my responsibility does not cease until the supplies are delivered to you at the agency.

Yours, &c.,

E. FENLON.

No. 6.

[*Telegram.*]

WASHINGTON, D. C., *Sept.* 28, 1878.

ED. FENLON.

Under your contract, dated July sixth, 1878, we have a rate for freight to Wichita, Kansas. I now demand that you deliver all freight for the Cheyenne and Arrapahoe Agency to the Government teams now at Wichita, J. A. Covington having the same in charge. If, in face of this formal demand, you neglect immediate compliance, you will thereby forfeit all claim to compensation for work done under said contract.

E. A. HAYT,
Commissioner.

No. 7.

[*Telegram.*]

LEAVENWORTH, *Sept.* 28, 1878.

E. A. HAYT,
Commissioner Indian Affairs,
Washington, D. C.

Your dispatch received. There are no goods receipted for by me except from New York to Cheyenne Agency.

My contract not only gives me the right to transport these goods, but compels me to do so, and holds my bondsmen liable for my not doing so. I intend to stand by my contract and perform it to the letter. If I do so, I imagine I will not forfeit much. In other words, my contract says I shall transport goods from New York to Cheyenne Agency. I have receipted for such goods and am performing my contract, and I deny your power or authority to interfere with me when carrying my contract out in good faith.

E. FENLON.

No. 8.

[*Telegram.*]

WASHINGTON, D. C., *Sept.* 29, 1878.

E. FENLON.

The Asst. Attorney General has decided that under your contract the Govt. has the option to direct whether you shall deliver goods at Wichita, Kansas, or at the agency. My demand for you to deliver the goods at Wichita was peremptory. Your bondsmen cannot be harmed by delivering the goods according to your contract. Your refusal will certainly hurt you and bar any payment to you. You have had full and timely notice from this Office and cannot plead ignorance. I do not propose to argue this matter further. Your refusal to deliver as directed will involve you in a controversy where you cannot possibly win.

E. A. HAYT,
Commissioner.

No. 9.

LEAVENWORTH, *Sept.* 30, 1878.

HON. E. A. HAYT,
Commissioner Indian Affairs,
Washington, D. C.

The Attorney General could not have had the facts pre-

sented to him, or he would never have made the decision you mention. Of course the contract provides that you may direct the goods to Wichita, or to the agency, and I must take them accordingly, but when they are shipped in New York and directed to the agency and I receipt for them to be by me delivered there, which is the case under consideration, the contract gives you no power to take the goods from me at any intermediate point, nor would your order relieve me and my bondsmen from liability. I have no desire to argue this matter further; if I am wrong, I am willing to take the consequences. I have no fears, if the Attorney General will take the contract and the facts of this case as they are, he must decide I am right. He cannot decide otherwise. I have receipted for the goods at New York addressed to the agency. I have contracted to deliver as directed. The contract gives you no power to change this, and gives me the right to so deliver. If you will put the case this way to the Attorney General, he is too good a lawyer to deny my right. I suppose rights under a contract are reciprocal. What are my rights I suppose Government officers will not deny. What are the rights of the Government, I cheerfully concede. Your threat that I will be certainly hurt and get into a controversy where I cannot possibly win, I hope are not indications of any personal feeling on your part to injure me. I only insist on my contract rights. I would be a dog if I did less, and I have a right to assume that neither you nor any other Government officer can blame me for so doing, or have a right to threaten me. I have dealt fairly with the Government, and I propose its officers shall deal justly with me.

Very respectfully, your obedient servant,

E. Fenlon.

And now, the transportation of "the goods and supplies" having been made by me, and I *having "presented to the office of Indian Affairs the bills of lading,"* according to Article IX

of my contract, the question is, is it the duty of the Commissioner of Indian Affairs to pass my bills so presented? Is it not the duty of the Honorable Secretary to grant what I ask, a peremptory order on the Commissioner to do as I request?

I waive all questions of courtesy between the officers of the department. With such questions I do not propose to deal. I have certain rights under my contract, or I have not, and the Commissioner has certain duties to perform, or he has not, and I present my case with all due respect to the Honorable Secretary, claiming, as I conceive, *only* my rights under my contract; and if my case is a good one, the Secretary having the power to give me my rights, I ask that the orders I pray may be granted, so that I may not be compelled to the expense and time of establishing my rights in the courts.

I start out with the proposition that the Department over which the Secretary presides desires always *to do what is right*, and accord to every citizen who is a contractor with the Government *his rights*; and that, therefore, an appeal to the Secretary will be decided upon his judgment of *the rights and duties of the parties* under the contract, regardless of any question of courtesy between the officers of the Department, or any question of feeling—if any exist—between the Commissioner and the undersigned. Conceding his right to his opinion, I claim the privilege of entertaining mine.

The Department owes me the money called for by my bills of lading, or it does not: if it does it should pay me, otherwise not.

The claim of the Commissioner verbally made, and by telegram is that he *had the right* to order me to deliver my freight *so shipped and receipted for* as herein stated at Wichita.

If so, then it was my duty to obey his orders; if I disobeyed legal orders given by him, then I must suffer the consequences.

He has assumed that I, having violated his orders, shall suffer and be assessed the penalty by not allowing my claims as presented.

Has he the right under the facts of this case to do so?

Having received "the goods and supplies of the Indian Department at New York, (Article I,) they having been "consigned to the Cheyenne and Arrapahoe Agency," and I having receipted for them, and being responsible therefor until "*they were delivered according to consignment * * * at the place of destination*," did he have the right to take these goods from me at Wichita, and deprive me of the benefits of my contract?

That there are certain circumstances which might arise which would, *from the neccssities of the case*, give the Government the power to stop these goods at Wichita, and take them from me—such as an outbreak among the Indians to whom the goods were consigned, a rebellion, secession, earthquake, or some such extraordinary event—it might change the rights of the parties as existing between them under ordinary circumstances.

But here there is no such case. (See No. 3 telegram herein stated, where I am ordered peremptorily "*to turn over goods for Cheyenne and Arrapahoe Agency*," at Wichita.) These goods I had contracted to deliver at the Agency. There is no power reserved by the contract in the Commissioner to change the destination of these goods;—to take these from me at any intermediate point after I had receipted for them and was by the terms of the contract *bound* to deliver them at "point of destination." As the Commissioner has no power by law or by the contract, and there is no showing of any extraordinary event, which, by necessity, might justify the order, the order would not protect me if the goods were lost between the point of shipment and point of destination; and it follows that the order had no legal validity to deprive me of the benefit of my contract to transport the goods as shipped.

It might, as it seems it did, suit the convenience of the Commissioner and the pleasure and profit of the Indians to take some of this freight from me "*after the Sedgwick County fair*," (see No. 1 of the correspondence herein;) but the

Honorable Commissioner's convenience;—the pleasure of the Indians;—or even the economy of the transportation, were matters with which I had nothing to do. I had *contract* rights and duties. I did not contract *to obey the orders of the Commissioner*, but to transport such freight as would be delivered to me, and that I have done.

But the Commissioner holds that, because I had a rate in my contract to Wichita, which is true, he had the power to order me to turn over goods at Wichita, which I had receipted for to be safely delivered at the agency. If he has that power it must exist either by law, the peculiar and extraordinary circumstances of the case, or by the contract. By neither does it exist here.

The case is not at all analogous to the case of McKee *vs.* U. S., in 1 Court of Claims, 336. There the contract "*was terminated*" by the Government without the consent of the contractor, and the contract price was held not to be the measure of damages; and the contractor had no right to make damages by completing the contract; but when ordered to stop, and the Government thereby subjecting him to loss for a conceded violation of the contract on its part, the measure of damages was what the contractor could have made by completing the service. This is very familiar law, but not at all applicable to this case.

Here, there is no termination of the contract, for it has been going on ever since and is in force till the end "*of the fiscal year ending June* 30, 1879," and the question here is, whether during the performance of the contract one party thereto can deprive the other party of his pay for work done, which by the contract he was bound to do, and which he had *the right to do.*

The undersigned does not pretend to place himself upon any patriotic grounds. He made his contract as he would with another individual to do so much and such kind of service and receive certain pay therefor. He has done the service. He presents the *conclusive* evidence of his right to his pay, to wit, his bills of lading, and is answered only by the

Commissioner's statement, "you have disobeyed my orders and shall not have your pay."

The case of Wormer, 4 Court of Claims, 258, is no answer to this case. There a contractor was awarded damages to the extent of what he might have made on his contract, and that decision was upon the ground that the Government refused to receive certain horses he had contracted to deliver. And here the Court of Claims only re-affirmed the ancient doctrine that where A prevents or stops B from the performance of a contract, B may recover from A, as a measure of damages the amount he could have made if he had carried out the contract according to its terms. But the Hon. Secretary will observe that these principles of the measure of damages are based upon a contract *terminated* by the act of one party, and do not apply to cases where the work has been *actually* done according to contract, and the only objection to payment being made is the disobedience of an order which we claim was illegal and which deprived us of rights under the contract. Judge Millar announcing the opinion of the Supreme Court of the United States in the United States *vs.* Speed, 8 Wallace, 184, says that "*where the obligation of Plaintiffs requires an expenditure of a large sum* in preparation to enable him to perform it—the contract—and a continuous readiness to perform, *the law* implies a duty in the other party to do whatever is necessary * * to enable plaintiffs to comply with their covenants."

This being a case between the United States and a claimant, the Supreme Court, the final arbiter in such matters, has laid down the rule that must govern this Department as well as all inferior courts and citizens; that is, it is the duty of the Commissioner to do whatever is necessary to enable me to comply with my contract. Instead of doing so the order, if obeyed, would compel me to violate my contract, would deprive me of the benefit of my contract, and if the property which I was bound by contract to protect and preserve had been lost, when the accounting officer of the Government would charge me with

that loss the order of the Commissioner would not legally protect me or my bondsmen. If this contract had been made as contracts are made in the military department of the Government, (spccially reserving to the military officers powers to change the written stipulations, and providing for additional compensation to the contractor in case of such change,) it would be a different thing.

But assuming, for the sake of the argument, that I made a contract, not to transport freight "*as delivered to me, and to its destination as per bills of lading,*" but to obey all orders that might be issued to me by the Commissioner of Indian Affairs, then, I respectfully ask, where in the law, by the contract or custom, does the Honorable Commissioner of Indian Affairs get the power to assess the penalty against me, and impose the punishment? This he does, by withholding the pay due me as per my bills of lading. If I have done wrong, my bond is amply good to reimburse the Government for any violation of my contract; and, as I am advised, the Government's legal rights on any such claim are on my bond, and that no power exists in the Honorable Commissioner of Indian Affairs to try my case, adjudge me guilty, and impose the punishment, by withholding my compensation for services actually rendered. Such a power, I am advised, is vested only in the judicial authority of the Government.

To conclude, I am simply claiming what I conceive to be my legal rights. If I am compelled to observe the terms of my contract, contracts being mutual and reciprocal, I have the right to demand that the Government shall observe the stipulations on its part. If this be not true there is no sense in making contracts. If the Commissioner had the right to make me give part of my freights to these Indian trains, he had the right to order me to deliver it to anyone else, who would transport it for either less or more than my contract provided for. I do not care to refer to the evident feeling with which the dispatches of the Commissioner are written, but as I am appealing to the head of the Depart-

ment under which I am acting, it is no more than just to myself, and to the authority to which I do appeal, to refer to the dispatch of 28th September, 1878, in which I am threatened "*with a forfeiture of all claims to compensation under my contract,*" unless I yield immediate compliance with his demands; and to the dispatch of 29th September, 1878, in which I am told "I will be involved in a controversy in which I cannot possibly win," and that my "*refusal to obey*" his orders "*will certainly hurt me, and bar any payment.*" In this controversy, and in this application for my rights, as I conceive them to be, I wish to make no personal question; because I am a contractor I am not a serf. I have dealt with the Government for years, and I have the right to say I have dealt fairly. If I am wrong in the position I take I must suffer the consequences, and I am willing to do so.

My vouchers for my transportation are in the Indian Office, and some of them have been there for months.

My contract says I "shall be paid upon presentation of these vouchers."

I have not been paid, and payment is denied me by reason of the facts herein stated.

I respectfully ask at the hands of the Hon. Secretary, if he shall adjudge my case just, that an order may be issued, commanding that I shall be paid.

Very respectfully,

EDWARD FENLON.

BEFORE THE

Hon. Attorney General of the United States

IN RE

LYKINS BROTHERS

VS. THE

PEORIA TRIBE OF INDIANS

Brief and Argument

JAMES A. DELAWTER,

To the Hon. A. H. GARLAND,

Attorney General of the United States:

SIR: In the matter of Wayland C. and E. W. W Lykins, relative to their rights, &c., as members of the Peoria tribe of Indians, submitted for your opinion by the Honorable Secretary of the Interior on the 18th inst., I beg leave to say:

First. That the said Wayland C. and E. W. W. Lykins were the children and heirs at law of the Rev. David Lykins, (Ma-eha-co-me-yah,) who was adopted into the said tribe in 1853, and who, with his wife and said children, Wayland C. and E. W. W. Lykins, and a relative of the family, were recognized and confirmed in their right to full membership in said tribe by the treaty proclaimed August 10, 1854. (See Revision of Indian Treaties, 426–432.)

Second. That having thus been lawfully adopted into the tribe as members thereof, and that adoption having been sanctioned and ratified by treaty between said tribe and the United States, there is no authority of law by which they can be dispossessed or deprived of their legal rights and interest, in the common estate of said tribe, without their consent. (6 O. A. G., 148 and 663–4; see, also, Art. 6, Constitution of the United States.)

Third. That the said Lykins brothers were minors at the ratification of the treaty proclaimed October 14, 1868, and it was made the duty of the chiefs of said tribe, by article 23 of said treaty, to act as guardians of all minors, to protect their interests, and to place their names upon the rolls of said tribe, and if the names of the Lykins brothers were not placed thereon, it was no fault of theirs, but a gross neglect of duty on the part of said chiefs, which in nowise should deprive them of their legal rights. (See Revised Indian Treaties, 839, &c.)

Fourth. If, under the said treaty of 1868, it was the intention of said tribe to dispossess or deprive the Lykins brothers, then minors, of their right to membership therein, such intention could not lawfully be carried into effect. The United States can rightfully make no treaty with a tribe of Indians, which will deprive any member of such tribe of his lawful rights, without just compensation. (11 O. A. G., 145–6.)

Fifth. That it was not intended by the treaty of 1868 to deprive the Lykins brothers of their right to membership or leave their names off the rolls, because they were recognized officially as members of said tribe by the chiefs and the Department of the Interior, as shown by deeds to their share of land, disposed of under said treaty and signed by said chiefs, attested by the agent of said tribe, and approved by the Secretary of the Interior subsequent to the ratification of the said treaty of 1868. Said land was sold and conveyed, in pursuance of the said treaty of 1868, as the records of the Interior Department show. This we submit as proof positive of their recognition to membership after the ratification of said treaty, and also as to the intention of the treaty-making parties.

Sixth. That the said chiefs, recognizing that they had failed to perform their duty as guardians of minors under article 23 of the treaty of 1868, corrected the error or omission on July 15, 1878, and each year thereafter, until and including the year 1885, by placing the names of the said Lykins brothers upon the rolls of said tribe.

Seventh. That the placing of the names of the Lykins brothers upon the rolls in 1878 was recognized and approved by the agent and the Department of the Interior, thereby sanctioning the action of the chiefs in doing, in 1878, what they should have done in 1868.

Eighth. That in 1879, in pursuance of instructions from the Indian Office, the agent of said tribe, having investi-

gated the matter, reported to the Department that the said Lykins brothers were members of said tribe, and that the chiefs had properly placed their names upon the pay rolls.

In 1881 Wayland C. Lykins made a lease of land to C. E. Middaugh, wherein his membership was again certified to by the chiefs and agents and approved by the Secretary of the Interior.

Again: The official list of the tribe made up, signed, and filed in the Department of the Interior by the chiefs and delegates in March, 1880, contains the names of the Lykins brothers.

Ninth. That on August 29, 1887, the said case was disposed of as follows:

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
WASHINGTON, *August* 29, 1887.

W. C. LYKINS, Esq.,
Baxter Springs, Kansas:

SIR: In reply to your communication dated August 12, 1887, I have to state that I have reached the conclusion that David Lykins was made a member of the Peoria tribe of Indians, and that his sons have thus an inherited right to membership in that tribe, although the means used by them to induce the chiefs to place their names on the rolls were corrupt and dishonest.

The agent will be instructed to pay annuities to yourself and your brother hereafter. For the annuities withheld, you should make application to this office, accompanied by the certificate of the agent that you are the identical W. C. Lykins whose name appears upon the rolls.

Very respectfully,
J. D. C. ATKINS,
Commissioner.

This, I submit,. is conclusive in favor of the right of Wayland C. and E. W. W. Lykins to full membership in the tribe of Peoria Indians.

The report of Inspector Banister, based upon the *ex parte* affidavits and statements of personal enemies of the Lykins brothers to the effect that they bribed or paid money to the said chiefs, in order to induce them to do their duty according to law, I submit, has no bearing on this case. If true, they cannot be dispossessed of their lawful rights and property as a punishment for such wrongdoing.

But it is not true *that they bribed* the chiefs. Even if they had been driven to the necessity of paying corrupt Indian chiefs money, in order to avoid being robbed of their property and rights, that is not bribery. It has none of the elements of bribery.

An Indian chief is not a sworn officer of the law.

If anybody in such a case is deserving of punishment, it is the chiefs themselves.

We submit, therefore, that the Lykins brothers are lawful members of the Peoria tribe of Indians; that their names are properly on the rolls of said tribe, and that they are rightfully entitled to share, in common with other members thereof, in all the rights, privileges, and immunities thereunto belonging.

Respectfully submitted.

SAML. J. CRAWFORD,
Attorney for Lykins Brothers.

WASHINGTON, D. C., *February* 20, 1888.

OPINION

OF THE

SECOND COMPTROLLER OF THE TREASURY,

ON A

CLAIM OF ALEXIS COQUILLARD,

ASSIGNEE OF JOSEPH BERTRAND,

FOR A DEBT AGAINST

THE POTAWATTOMIE INDIANS,

INVOLVING QUESTIONS IN REGARD TO THE

JURISDICTION

OF THE ACCOUNTING AND OTHER OFFICERS OF THE GOVERNMENT, IN THE ADJUSTMENT OF PUBLIC ACCOUNTS.

WASHINGTON:
GIDEON & CO., PRINTERS.
1851.

TREASURY DEPARTMENT,
SECOND COMPTROLLER'S OFFICE,
February 10, 1851.

PHILIP CLAYTON, esq., *Second Auditor*.

SIR: I herewith return the papers connected with the claim of Alexis Coquillard, assignee of Joseph Bertrand, which claim had been disallowed by you, and an appeal taken to this office.

The allowance of the claim having been urged upon this office in a written argument of able counsel, on the ground that the approval of the claim by the Commissioner of Indian Affairs was of binding authority on the accounting officers, and could not be disregarded by them without invading the just powers of the President and the Secretary of the Interior, both of whom the Commissioner is alleged to represent in his action on the claim; I have thought it necessary to examine somewhat fully into the respective jurisdictions of these several officers over the subject of claims on the Government. The importance of the subject of inquiry will account for the unusual length of the opinion which accompanies the papers returned.

You will perceive that I concur with you in disallowing the claim, and affirm your decision.

Very respectfully,

HILAND HALL, *Comptroller*.

OPINION.

TREASURY DEPARTMENT,
SECOND COMPTROLLER'S OFFICE,
February 10, 1851.

Alexis Coquillard, as assignee of Joseph Bertrand, having presented a claim to the Second Auditor, it has been disallowed by him, and an appeal taken to the Second Comptroller. The claim is founded on a written instrument purporting to have been signed by eighteen Indians in the presence of four witnesses. The writing is of the following tenor:

"CARRY MISSION RESERVATION,
August 10, 1837.

We, the undersigned chiefs and headmen of the Potawattomie tribe of Indians, hereby certify, that we have examined and had explained to us the account of Joseph Bertrand, senior, against us, and against the Indians of our respective bands, and are satisfied that the accounts are correct, and that the Indians of said tribe are honestly indebted to the said Joseph Bertrand in the sum of *five thousand two hundred and twenty-nine dollars* and three cents, which amount we hereby request the agent of the United States to pay to the said Joseph Bertrand."

Accompanying the writing are the affidavits of four persons, whose names appear upon it as witnesses, to the effect that the chiefs and headmen whose names are appended to the instrument, signed it by their marks, fully understanding the purport and object of it. There is also proof that the claim has been duly assigned by Bertrand to the claimant Coquillard.

This is all the evidence. But if proof were adduced that the consideration for which the instrument was executed was a just indebtedness of the Potawattomie tribe to Bertrand, and also that the Indians who executed it were headmen and chiefs, who had competent authority to bind the tribe by such an obligation, such additional evidence would not alone, in my opinion, authorize the accounting officers to admit the claim.

The instrument thus authenticated would at most be but evidence of a debt in favor of the claimant against the Potawattomie tribe of Indians, with perhaps a request of the tribe for the United States to pay it. There being no fund in the treasury specifically appropriated to the payment of the debts of the Potawattomie Indians, and no authority in the accounting officers to make the debt of the Indians a debt of the United States, their duty being merely judicial, it would manifestly be beyond their authority to direct the payment of it.

The claim has, however, been approved by the Commissioner of

Indian Affairs, whose action upon it is shown by the following endorsement, viz:

"Respectfully referred to the Second Auditor for settlement. The request herewith, of the authorities of the Potawattomie nation, for the payment out of their annuities of the claim of J. Bertrand, amounting to $5,229 03, being hereby sanctioned, payment to be made to the person or persons legally authorized to receive the same, charging the appropriation for fulfilling treaties with the Potawattomies. Act 30th September, 1850.

L. LEA, *Commissioner.*

OFFICE INDIAN AFFAIRS, 17*th January*, 1851.

This approval of the claim by the Commissioner of Indian Affairs, it is insisted, in behalf of the claimant, is binding upon the accounting officers, making it their imperative duty to allow it, and to charge the payment to the appropriation designated by the Commissioner. It is claimed that the acts of the Commissioner are to be considered as the acts of the Secretary of the Interior; that the jurisdiction of the Secretary, who represents the President, is over Indian affairs supreme, at least so far as the accounting officers are concerned; and consequently, that whatever claim the Commissioner adopts and approves, it is the duty of those officers to allow, and that they have no power to inquire into the propriety or legality of the allowance.

In support of this view of the limited power of the accounting officers, a long and labored written argument has been filed with the Comptroller by the counsel for Coquillard, in which the opinions of several attorney generals are referred to and relied upon as sustaining the doctrine contended for.

The earnestness and ability with which the doctrine is set forth and maintained seem to justify, and indeed to demand, a full and deliberate examination of it. If the counsel are right in their view of the respective powers of the Commissioner and the accounting officers, it is decisive in favor of the claim; if they are wrong, the question whether the approval of the Commissioner makes it a valid claim, remains open for consideration in this office. It, therefore, seems necessary that this preliminary question of jurisdiction should be met and decided.

The following extract from the argument of the counsel shows the ground on which the authority of the Commissioner is maintained:

"As the law has given the Commissioner of Indian Affairs *exclusive* jurisdiction over all matters relating to Indian affairs, it follows, *ex vi termini*, that every decision which he makes upon the matter, which is not reversed by the Secretary, is as much binding upon the accounting officers as if it had been made by the Secretary of the Interior himself. And the reason is this, because, as Judge Berrien says, *he is presumed always to act by the direction of the President.* The law makes it his *duty* so to act. It expressly requires the President and Secretary to prescribe the regulations which shall govern him. They have prescribed these regulations, and the Commissioner acts in all things, in

accordance with them. Suppose *they are in violation of law*, can the Second Auditor, or any other accounting officer, disregard or set them aside? Have the accounting officers *any* power *whatsoever* over the acts of the Executive? The very statement of the proposition shows how fallacious a contrary mode of reasoning must be."

Now, I utterly deny that the Commissioner of Indian Affairs, the Heads of the Departments, or even the President himself, has any such power over the accounting officers, as is claimed by the counsel. On the contrary, I maintain, that when an account or claim comes before the accounting officers for settlement or allowance, by whomsoever it may have been recommended, they have not only the power, but that it is their imperative duty, from which they cannot escape without a violation of their official oaths, to inquire into its legality, and if they deem its allowance illegal, to reject it. I further maintain, that in the system of accountability prescribed by our laws, the authority to judge of the legality of expenditures made by or under the direction of the heads of departments, was conferred on the Auditors and Comptrollers, with the design and intention that it should be exercised, and should operate as a check upon unnecessary and improvident expenditures.

I admit that the doctrine insisted on by the counsel in this case does receive apparent countenance from the language used in an opinion of Attorney General Berrien, in another of Attorney General Butler, and more especially in an opinion of Attorney General Johnson, which is in the following words:

ATTORNEY GENERAL'S OFFICE,
19*th April*, 1849.

SIR: The opinion of the Secretary of the Interior directing the claim of H. Laselle for $\$2{,}224\frac{75}{100}$ against the Miami nation of Indians to be paid, is, in my judgment, *binding upon all the subordinate officers by whom the account is to be audited and passed*. This has been the practice of the Government from its origin, and is as well authorized by the law organizing the departments, as it is absolutely necessary to the proper operation of the Government.

I deem the point so clear that I feel it to be unnecessary to refer to opinions upon the question given at different times by this office.

I have the honor to be, &c.,
REVERDY JOHNSON.

Hon. W. M. MEREDITH,
Secretary of the Treasury.

I venture to say, in the outset, that this opinion put forth with so much confidence is utterly untenable by either argument or authority; that there has been no such continued practice of the Government as the opinion refers to—that the law organizing the departments gives no countenance whatever to such a doctrine—and that the weight of authority of former Attorney Generals, is altogether different from what the opinion indicates.

The leading idea which seems to pervade the argument of the counsel in this case, as well as that of Attorney General Johnson, appears to be that there *must be*, and therefore is, some lurking undefined power in the Heads of Departments derived from the President which entitles them to control the acts of all officers of the Government, whose grade and rank are deemed inferior to theirs. I do not understand that there is any such Executive power.

It is one of the fundamental principles of our Government, that the President, like any other individual, is responsible to the laws. He can no more do an illegal act with impunity than any other citizen. That his instructions to an inferior Executive officer to do an act not authorized by law, will be no justification to such officer for doing it, is the well known settled law of the land. Instances are numerous in which such inferior officers have been made liable as trespassers, though acting under the express orders of the Executive Departments. Little *vs.* Barveme, 2 Cranch's R., 170. Tracy *vs.* Swartwout, 10 Peters, 280. It must, therefore, be very apparent, that the power of the Executive over inferior officers is not necessarily to be considered as unlimited.

The Constitution indeed makes it the duty of the President "to take care that the laws he faithfully executed;" but that does not confer on him the power to perform duties himself, or by his agents, the Heads of Departments, which the law has specially confided to other inferior officers. Thus, it will not be pretended that the Head of a Department, or the President, could control the judicial acts of one of the judges of the circuit court for the District of Columbia; and his authority over the official acts of a justice of the peace for the District, would be equally powerless. The power of the President, or the Head of a Department, representing him, over the acts of an officer, does not depend upon the supposed rank or grade of the officer, but *upon the law* conferring authority on such officer.

The Supreme Court in the case of Kendall *vs.* The United States, 12 Peters' R., 610, use the following language in regard to the power of the Executive:

"The executive power is vested in a President; and as far as his powers are derived from the Constitution, he is beyond the reach of any other Department, except in the mode prescribed by the Constitution through the impeaching power. But it by *no means* follows, that every officer in *any* branch of that Department is under the exclusive direction of the President. Such a principle, we apprehend, is not, and certainly cannot be, claimed by the President.

"There are certain political duties imposed upon many officers in the Executive Department, the discharge of which is under the direction of the President. But it would be an alarming doctrine, that Congress cannot impose upon any Executive officer any duty they may think proper, which is not repugnant to any rights secured and protected by the Constitution; and his duty and responsibility in such cases grow

out of, and remain subject to, the control of the law, and not to the direction of the President."

The question, then, whether the Head of a Department, (who, within the proper sphere of his Department, is, I admit, presumed to exercise the powers of the President,) is authorized to control the action of the accounting officers in the adjustment of claims, is to be determined not by any vague notions of undefined Executive power, but by the laws of Congress applicable to the duties of those officers.

The acts in force which provide for the settlement of public accounts are those of September 2, 1789, and March 3, 1817.

The act of September 2, 1789, which is entitled "An act to established the Treasury Department," declares that the officers of the Department shall be a Secretary of the Treasury, to be deemed head of the Department, a Comptroller, an Auditor, a Treasurer, a Register, and an Assistant Secretary of the Treasury.

It is made the duty of the Auditor (sec. 5) "to receive all public accounts, and after examination to certify the balance, and transmit the accounts, with the vouchers and certificate, to the Comptroller for his decision thereon;" and it is provided "that if any person whose account shall be so audited be dissatisfied therewith, he may, within six months, appeal to the Comptroller against such settlement."

It is made the duty of the Comptroller (sec. 3) "to examine all accounts settled by the Auditor, and certify the balances arising thereon to the Register;" and the duty of the Register (sec. 6) is declared to be "to receive from the Comptroller the accounts which shall have been *finally adjusted*, and to preserve such accounts with their vouchers and certificates."

By the further provisions of the act, which it is unnecessary to recite in detail, the Register was to furnish the Secretary with copies of the Comptroller's certificates of balances, and the moneys found due were to be drawn from the Treasury by warrants from the Secretary, countersigned by the Comptroller, and recorded by the Register.

This completed the system for the adjustment and payment of public accounts. They were first to receive the examination and approval of the Auditor; and were then to be revised by the Comptroller. A dissatisfied claimant might appeal from a decision of the Auditor to the Comptroller; but no appeal is provided for from the Comptroller. On the contrary, the accounts after receiving his revision are declared to have been "*finally adjusted.*"

The act of March 3, 1817, entitled "An act to provide for the prompt settlement of accounts," provides (sec. 2) "that from and after the third day of March next, all claims and demands whatever, by the United States or against them, and all accounts whatever in which the United States are concerned, *shall be settled and adjusted in the Treasury Department.*"

It is difficult to conceive how, in the face of this statute, declaring that accounts shall be settled and adjusted in the Treasury Department,

a Secretary of War or of the Interior is to acquire an authority over their settlement and adjustment.

The act of 1817 preserves the system of auditing and revision of accounts established by the act of 1789, adding to the officers provided for by that act four Auditors and one Comptroller. All accounts arising in the War and Navy Departments are to be examined by the Second, Third, and Fourth Auditors, and revised by the new or Second Comptroller; and all other accounts are to be under the jurisdiction of the First and Fifth Auditors and First Comptroller. The duties in regard to the preservation of accounts that have been adjusted, which by the act of 1789 had been conferred on the Register, were by this act, so far it regarded the accounts arising in the War and Navy Departments, transferred to the Auditors who were charged with their settlement; and the act (sec. 5) makes it the duty of such Auditors "to receive from the Second Comptroller the accounts which shall have been *finally adjusted*, and to preserve such accounts, with their vouchers, certificates," &c.

By the act of February 24, 1819, the settlement of accounts arising out of Indian affairs, with the exception of those appertaining to Indian trade, was transferred from the Fifth to the Second Auditor, who, in the language used in former acts, is directed "to receive from the Comptroller the accounts that shall have been *finally adjusted*, and to preserve such accounts with their vouchers and certificates."

There are numerous acts of Congress in which special powers are conferred on others than the accounting officers, in a manner indicating very clearly the understanding of Congress, that but for such provisions the adjustments of the accounting officers would be conclusive.

Thus, by act of February 21, 1823, "the proper accounting officers of the Treasury" were authorized "to adjust and settle the accounts and claims of Daniel D. Tompkins, late governor of the State of New York, on principles of equity and justice, *subject to the revision and final decision of the President of the United States.*"

Again, by the act of March 1, 1823, in the settlement of accounts of persons remaining charged on the books of the Third Auditor with public moneys advanced prior to the first of July, 1815, "the proper accounting officers" were authorized to admit credits on such evidence as would be received in courts of justice; and it was provided, that whenever, in the settlement of such accounts, a difference of opinion should arise between the accounting officers, the case should be referred to the Secretary of War, whose decision should be conclusive. The accounts which were thus to be settled had all arisen in the War Department, and the Secretary, according to the argument furnished in this case, ought to have had perfect control over these accounts, without any special provision to that effect Congress do not appear to have so understood it; and the provisions conferring on the President the power of revision in the act for the relief of Gov. Tompkins, and on the Secretary in this act, seem quite conclusive, that without such

provisions they would have had no such power. Many other acts of legislation of a similar character might be referred to, but I deem it unnecessary to pursue this branch of the argument further. The language of the acts of Congress relative to the duties and powers of the accounting officers of the treasury, appears to me to establish, beyond doubt or controversy, so far as the executive officers of the Government are concerned, their exclusive and final jurisdiction in the settlement of claims and accounts.

If the power of the President and Heads of Departments to control the accounting officers in the allowance of accounts were to be decided upon the authority of the opinions of former Attorney Generals, such power would not be sustained, as I shall now proceed to show.

In 1823 Congress passed an act directing "the accounting officers of the Treasury Department to settle and adjust the account of Joseph Wheaton while acting in the Quartermaster's department, upon the principles of justice and equity." Mr. Wheaton was dissatisfied with the adjustment of the accounting officers and applied to the President for relief, who referred his application to the Attorney General. Mr. Wirt, who then held the office of Attorney General, examined the subject fully, and under date of October 20, 1823, gave an elaborate opinion that the President had no power to interfere in the matter. The result of Mr. Wirt's examination is thus summed up by him:

"My opinion is, that the settlement of accounts of individuals by the accounting officers appointed by law is final and conclusive, so far as the Executive department of the Government is concerned. If an individual conceives himself injured by such settlement, his recourse must be to one or the other two branches of the Government—the Legislative or Judicial. If a balance be found against him, by the disallowance of credits which he deems just, he may refuse payment and abide a suit; in which case he will have the benefit of the opinion of a court and jury. If a balance be found in his favor, but smaller than he thinks himself entitled to, his appeal is to Congress, where the representatives of the people will pass upon his claim." Opinions of Atty's Gen., 471, 475.

On the 17th of January, 1824, on the application to the President, by Joshua Wingate, to have a sum passed to his credit in the settlement of his accounts at the Treasury, Mr. Wirt, referring to his former opinion in the case of Major Wheaton, advised the President that he had no right to interfere in the settlement of the accounts. Opinions, ibid., 479.

Again, on the 27th of July, 1824, on reference to him by the President, of an application by Elbert Anderson to have a credit allowed him in the settlement of his accounts as Army contractor, Mr. Wirt reaffirmed his former opinion as follows:

"I beg leave to call your attention to an elaborate opinion which I had the honor to address you on the 20th of October last, in the case of Major Joseph Wheaton, who sought to draw from you some instructions to the accounting officers relative to the settlement of his accounts. In

that case, after reviewing fully the organization of the accounting department; after scanning, with care, the language of our laws in relation to the operations of that department; after looking at the nature of the office of the President of the United States, the character of the duties devolved upon him, and the utter impossibility of his sitting in appeal over the accounting officers of the Government, or superintending and directing their operations, I gave it as my opinion, that he had nothing to do with the settlement of public accounts, either in the form of direction to accounting officers *a priori*, or revision and reversal *a posteriori;* that his interference with this business, so far from being required by law, *would be a usurpation on the part of the President*, which the accounting officers would not be bound to respect, except it were (as in the case of Gov. Tompkins) expressly ordered by the particular law to act under the direction and orders of the President." Opinions of Att'ys Gen., 506.

Subsequently on the 19th February, 1825, on applications of Gen. Hull and of Col. McKenney to the President, in relation to their several accounts, Mr. Wirt, referring to his former opinion in the case of Maj. Wheaton, advised the President that the accounts were matters which belonged exclusively to the accounting officers of the Government, and with which he had nothing to do. Ibid., 528.

The next opinion in the order of time which appears to have a bearing upon the question under consideration, is that of attorney general Berrien, dated December 4, 1829, and which is relied upon as sustaining the position assumed by the counsel for the claimant in the present case. Ibid., 740.

The question submitted to Mr. Berrien grew out of a claim of General Parker for double rations, and for fuel and quarters as adjutant and inspector general of the Army. The claim for *double rations* had been rejected by the accounting officers, and the judgment of the Supreme Court had also been against the claim. 1 Peters' Reports, 393.

It had been presented again to the accounting officers in the shape of an allowance for *fuel and quarters*, rejected by the Third Auditor, and an appeal taken to the Comptroller. When Mr. Hill was appointed Comptroller, he found the account in the office, with an endorsement of his predecessor upon it, which he was disposed to consider as an allowance of the claim. The Third Auditor declined to treat the claim as adjusted, and refused to pass the amount to General Parker's credit. Mr. Hill, through the Secretary of War, asked the opinion of the Attorney General, whether the decision of the late Comptroller was final or might be reopened, and if reopened, whether General Parker was entitled to the allowance claimed?

Mr. Berrien thought the facts stated were not sufficient to enable him to determine whether the account had been finally adjusted by the Comptroller or not; but he held, that if so adjusted the account was subject to be reopened by the Secretary of War acting under the authority of the President. He derived this authority of the Secretary from the provision in the statute requiring him to issue requisitions for

the balances certified to him by the Comptroller. "When the account has been settled and certified to the Secretary, he is then" says Mr. Berrien, "to issue his requisition for the amount; and unless he is a mere machine, or liable to the control of his own or the subordinates of another department, he must be entitled, before he does so, to *review*, and if need be, to *reverse the decision of the Comptroller*."

As this is the only statute provision that has ever, to my knowledge, been cited as conferring the power of revision of public accounts on the Head of a Department, it may be worth while to look more closely into it.

Mr. Berrien commences the above statement with a very important error of fact. He speaks of the *account* being settled and certified to the Secretary, as if, when he was called upon to issue the requisition he would have the *account* before him, and might look into it to ascertain whether it was proper to grant the requisition. But the statute makes no such provision. By the act of March 3, 1817, sec. 5, the *Auditor* receives from the Comptroller the accounts with the vouchers; and the Comptroller certifies to the Secretary, (sec. 9,) not the *account* that has been settled by him, but merely "the *balance arising thereon*." The accounts are not, either in contemplation of law or in practice, sent to the Secretary. Surely, if Congress had intended to confer on him the power of looking into the accounts to determine the propriety of issuing requisitions, they would at least have furnished him with the means of doing so. By looking back to the act of 1789, it will be found that the Secretary of the Treasury, who was required to draw warrants for the balances found due by the accounting officers, was left in no better condition than the Secretary of War is at present, to judge of the propriety of the adjustment. By that act, the accounts and vouchers were to be transmitted by the Comptroller to the Register, and the only papers to be furnished the Secretary, from which he could grant requisitions, were *copies of the certificates of balances*, which copies were to be furnished him by the Register. Sec. 6. But additional light may, perhaps, be thrown on this matter by going still further back, to the foundation of our system of accounting; which was the ordinance of the old Congress, "for regulating the Treasury and adjusting the public accounts," adopted Sept. 11th, 1781, 3 Journals Cong., 666. That ordinance provided for precisely the same officers that were constituted by the act of 1789, the head of the office in the ordinance being denominated Superintendent of Finance, instead of Secretary of the Treasury. The duties of the several officers were also similar. In fact, the act of 1789 only continued in operation the old system that had been in existence under the ordinance from 1781. By that ordinance, the Comptroller was to transmit the account when finally adjusted to the Register, to be entered of record with this further provision, viz., "and a *note of the balance* shall be certified by the Comptroller to the superintendent of Finance, *to make out the proper warrant for payment*." It seems very clear, that under this ordinance the issuing the warrant for payment was deemed a necessary consequence of the final adjustment of the account, and that the act of issuing it was merely ministerial, conferred on the Superintendent to

guard against irregular drafts on the Treasury, which might be apprehended if the same officers who settled the accounts were also allowed to draw warrants for their payment.

Under our system of paying claims out of specific appropriations, I should think the Secretary would be justified in refusing a requisition, if he were satisfied there was no appropriation to which it could be properly charged; and if there be any other ground on which payment of an adjusted claim might be legally refused, I should suppose the Secretary, on discovering it in any case, might properly decline to issue the requisition. This, I am disposed to think, was the extent of the power designed to be conferred on him. But, if it were intended he should exercise a discretion in regard to the issuing of requisitions, to be governed by his opinion of the justice and propriety of the allowances, and thus possess an absolute negative upon the payment of accounts, it would not by any means follow, as Mr. Berrien seems to suppose, that he might go the long stride further, of reversing the allowance and re-adjusting the accounts. If Congress had designed that the power of revision of the settlements of the Comptrollers should be exercised by the Heads of the Executive departments, they would assuredly have provided for an appeal from his decisions, as they did to him from those of the Auditors. But, when the law expressly provides that all accounts in which the United States are concerned "shall be settled and adjusted *in the Treasury Department*," when the adjustments of the Comptroller are declared to be final, and not an intimation is found in any act of Congress that there could be any appeal from his decisions, or any revision of them, it would be adopting a latitudinarian construction, which, I apprehend, the learned Attorney General would not, on reflection, feel bound to maintain, that such power of revision is, nevertheless, conferred on the Secretary of War, by the mere authority to draw requisitions in payment of balances which have been certified to him from the office in which the accounts have been adjusted.

We next come to an opinion of Attorney General Taney, given April 5, 1832, on reference to him by the President, of a memorial of General Taylor, in which he enters into a very full examination of the question, whether the settlement of an account, made by the proper accounting officers of the Government, could be reviewed by the President. The result of his examination is summed up in the concluding part of his opinion, as follows:

"These laws, as well as those which preceded them on the same subject, appear to me not to contemplate any appeal to the President, and I think, therefore, that the decision of the Comptroller in this case is conclusive upon the Executive branch of the Government, and that the President does not possess the power to enter into the examination of the correctness of the account, for the purpose of taking any measures to repair the errors which the accounting officers appointed by law may have committed. The party who supposes justice has not been done to him must seek relief in court when a suit is brought against him, or may bring his claim to the consideration of Congress; and

those, in my opinion, are the only means of redress left to General Taylor, if the accounting officers have erred in their decision." Opinions, 871–2.

On the 31st of May, 1832, in the case of Gen. Gratiot; and again, on the 18th day of December following, in the case of Mr. Hogan, on reference to him by the President, Mr. Taney, referring to his former opinion in the case of Gen. Taylor, on each occasion advised the President that he had no power to interfere in any way in the settlement of public accounts. Opinions, 877 and 895.

So much for the opinions of the present Chief Justice of the Supreme Court.

The next opinion, in the order of time, is that of Attorney General Butler, which is cited and relied upon by the counsel in the written argument before mentioned.

This opinion of Mr. Butler, which is dated May 17th, 1834, was given in reference to the same claim, which some years previously had elicited the before mentioned opinion of Mr. Berrien. Ibid., 956.

Subsequent to the time of Mr. Berrien's opinion there had been no further approval of the claim by the Comptroller, but General Parker had succeeded in procuring sundry endorsements upon his papers of Secretaries of War, which were more or less favorable to the allowance of the claim; and General Cass, then Secretary of War, requested the opinion of the Attorney General, whether the acts and decisions of the former Secretaries and Comptrollers were sufficient to authorize and require the accounting officers to settle and allow the account.

Mr. Butler, apparently without any knowledge of the previous opinions of Mr. Wirt and Judge Taney, and manifestly without examination of the question, treated Mr. Berrien's opinion as the law of the case, and held that the doings of the former Secretaries of War were sufficient to authorize and require the accounting officers to settle and allow the claim.

This opinion was not, however, carried into effect, but was successfully resisted by Mr. Thornton, the then Second Comptroller. On being furnished with the opinion by the Secretary of War, Mr. Thornton addressed a letter to him, under date of June 5, 1834, embodying at length the two leading opinions of Attorneys General Wirt and Taney, before referred to, and protesting that the Secretaries of War had no power to allow the claim; that it was unfounded in law, and ought not to be admitted.

The attention of the President having been called to the matter, he, on the 8th of July, 1834, transmitted to the Secretary of War an order, as follows, viz:

"The Secretary of War will suspend further proceedings on the claim of General Parker until I return. In the mean time he will call on the Attorney General for a full consideration of the whole case.

ANDREW JACKSON."

"July 8, 1834."

It does not appear that the Attorney General gave any further opinion on the subject. The presumption is that he became satisfied that the position taken by the Comptroller was correct; for no further attempts appear to have been made to coerce him into the allowance of the claim, and General Parker at the next session presented his petition to Congress for relief. The petition having been referred to the Committee of Claims of the House of Rrepresentatives, an unfavorable report was made upon it February 2, 1835, by Mr. Banks, from that committee, that committee giving a history of the claim, with copies of the endorsements of the Secretaries of War, the letter of Mr. Thornton, and other papers connected with the claim thereto appended. See reports of committees, 2d session, 23d Congress, No. 77.

That Mr. Butler afterwards became satisfied that the opinions of Mr. Berrien and himself were erroneous, is shown by a subsequent opinion given by him in another case, which appears wholly inconsistent with those opinions.

By the provisions of the Post Office act of 1825 the Postmaster General was to receive the income and make the expenditures of the Post Office Department, and to render an account of the same to the Treasury, "*to be adjusted and settled as other public accounts.*" In a labored opinion of Mr. Butler, given October 10, 1835, in the case of Stockton and Stokes, it became important to inquire and determine the extent of the Postmaster General's accountability under the provisions of that act, the extent of his accountability being measured by that which governed the settlement of other public accounts at the Treasury. After considering the matter with care, Mr. Butler did not come to the conclusion that, because the Postmaster General was the head of a department, and represented the Executive in the management of the affairs of the post office establishment, the accounting officers had no power to inquire into the legality of his acts. He sums up his conclusions on that point as follows:

"Whenever the accounting officers can see by the face of the account, or by the vouchers produced in its support, that moneys have been paid by the Postmaster General in cases or for purposes not authorized by law—and, still more, when they perceive that such payments were directly contrary to law—it will be their duty to disallow them, and to hold the Postmaster General a debtor to the Government for the amount. In the case of moneys paid for additional allowances, a rule is given, by the act of Congress, which the accounting officers may and ought to apply to every credit of this nature claimed in the account. If they discover that the rule prescribed by law has been violated in the allowance, I do not see how they can pass the payment to the credit of the Postmaster General without a palpable dereliction of duty." (*Opinions*, 1024.)

I have now noticed all the opinions of Attorneys General that I am aware of, having reference to the present subject of inquiry, and I think it must be admitted that their authority is decisive against the powers of

the Heads of Departments to interfere in any way whatever with the accounting officers on the adjustment of claims and accounts.

The power of the President and Heads of Departments to direct or review the decisions of the Comptrollers of the Treasury will, I apprehend, be also found to be altogether unsustained by practice.

During the administration of Mr. Monroe and Mr. Adams, the doctrine so clearly and explicitly stated by Attorney General Wirt appears to have been uniformly adhered to. Gen. Jackson, who was not apt to shun responsibility that belonged to him, fully acknowledged his want of authority over the accounting officers in the settlement of claims. Peebles and Gorham, contractors for supplies in the Subsistence department, being dissatisfied with the final adjustment of their account by the Second Comptroller, applied to the President for relief, who referred the application to the Secretary of War, by whom, through the Commissary General, a report was made July 1, 1835. The opinion of President Jackson, in his own original autograph, is found endorsed on the papers in the Third Auditor's office, as follows:

"The report made—Attorney General's opinion referred to. The decision of the Second Comptroller is final, over whose decisions the President has no power, except by removal. The Secretary of War will make known this decision to Mr. Peebles.

A. J."

It will be perceived that this decision, in July, 1835, was more than a year after Mr. Butler's opinion in Gen. Parker's case; and that Gen. Jackson, instead of recognising that opinion as law, recurs back to the earlier opinion of Judge Taney, which fully sustains the doctrine of his decision, that he had no power over the accounting officers except that of removal from office.

The practice of Mr. Van Buren's administration is understood to have corresponded entirely with that of Gen. Jackson on this subject.

In October, 1841, during Mr. Tyler's administration, application was made to him by Clements, Bryant & Co., to have the opinion of the Attorney General requested in regard to a decision of the Second Comptroller on their claim. Mr. J. C. Spencer, then Secretary of War, to whom the matter was referred, in a report to the President, expressed his full approbation of the opinion of Attorney General Wirt, of October 20, 1823, and advised the President that "the accounting officers of the Treasury constituted a judicial tribunal," from whose decision there was no appeal to the President or the Secretary of War; that, as the Comptroller had not asked the opinion of the Attorney General, and would not be bound to regard it when given, the request ought to be denied. The report of the Secretary of War was approved by the President, and both the report and approval were printed in the form of a circular for the information of claimants and public officers.

During Mr. Polk's administration, an application was made to him to interfere with the adjustment of the same claim, which he declined to do, making his endorsement on the papers, as follows:

"I have considered the application in the case to open the accounts of Bryant, Clements & Co., and decline to interfere upon the ground that Congress has expressly given the authority to settle the claims to the accounting officers of the Treasury Department, and that I have no right to control these officers in the performance of their duty. August 9, 1845.

J. K. POLK."

I am not aware that the present Chief Magistrate of the United States, or any of the Heads of Departments, claim the power of direction or revision of public accounts, or have indicated any desire to exercise such power.

I cannot but feel that the argument and authorities which have already been adduced in favor of the conclusive jurisdiction, so far as the Executive officers of the Government are concerned, of the accounting officers of the Treasury over public accounts, must be entirely convincing and satisfactory. Yet the fact that the doctrine has so recently been assailed with great confidence in an official opinion of an Attorney General, and that it is maintained in the present case with earnestness and ingenuity by able and learned counsel, must be my apology for pursuing the subject somewhat further.

It appears to have been a leading principle in the system of accounting established by the act of 1789, that the auditing and revision of accounts should be made by officers holding their appointments independent of the Heads of Departments, and wholly unconnected with the disbursements of the public moneys; it being deemed essential to the judicious and economical administration of the financial affairs of the Government, that the officers who directed an expenditure, should not also judge of its legality. Hence, the adjustment of accounts by the accounting officers was declared to be final, and was designed to be so.

This system was, however, broken in upon in some degree, when the superintendence of the collection of the revenue, in consequence of the duty having become too burdensome to the Secretary of the Treasury, was, in 1792, transferred to the Comptroller. Under this arrangement, the Comptroller was sometimes called upon to revise accounts for expenditures which he had himself directed. This has, however, always been deemed a defect in the system requiring correction.

In December, 1834, when Mr. Woodbury was Secretary of the Treasury, he, in compliance with a resolution of the Senate, prepared and reported to that body a plan for the re-organization of the Treasury Department. In that report he speaks as follows of this anomaly in the system of accounting, and what was desirable in such a system.

"A legal and proper check in the passing of accounts is not now supposed to be had by the First Comptroller, in respect to some accounts which may occasionally, though seldom, grow out of any of his own previous decisions or directions, as superintendent of the customs;

and it is manifest, that no effectual check can ever exist in any case where the same officer authorizes the expenditure and audits or controls the audit of the accounts." Senate Documents No. 6, page 5, 2d sess., 23d Congress. See also "an inquiry into the practicability of symplifying the system of public accounts, by P. G. Washington, Jan. 1832." Ex. Doc., 2d sess., 24th Congress, No. 71. This defect in respect to the duties of the First Comptroller has recently been corrected by transferring the superintendence of the collection of the revenue to the Commissioner of Customs.

In one branch of the Government, the practical operation of a system of accounting, which gave to the Head of a Department the direction of the expenditures, and also the control of the audit of them, has been tested by experience. I refer to the Post Office Department. It was, indeed, provided by the act of March 3, 1825, that the Postmaster General should, "once in three months, render to the Secretary of the Treasury a quarterly account of all the receipts and expenditures in the Department, to be adjusted and settled as other public accounts." But as all the payments were to be made by the Postmaster General previous to their being submitted to the accounting officers, and as the examination of the accounts at the Treasury could not be speedily made, but in fact became several years in arrear, the accounting answered no useful purpose whatever. The power of the Postmaster General over his expenditures was practically unchecked and unlimited.

The effect of this uncontrolled power of expenditure upon the financial management of the Department is well known. The expenditures became lavish and improvident in the extreme, not to say fraudulent and corrupt; and the Department was only saved from actual bankruptcy by a legislative examination and exposure of its affairs, and the subsequent appointment of a new and more economical and efficient head.

It seems to have been the concurrent opinion of legislators and statesmen of both political parties at the time, that the wasteful and extravagant expenditures of the Department were in a great degree chargeable to the want of that legal check upon its disbursements, which the system of accounting at the Treasury furnished to the other Departments of the Government.

On the 9th of June, 1834, the Senate Committee on the Post Office and Post Roads, who had been specially charged to examine into the condition of the Post Office Department, made report by Mr. Ewing, their chairman, which was very unfavorable to the Department, and scribed the derangement of it affairs "to the uncontrolled discretion exercised by its officers over its contracts and funds." Mr. Grundy and Mr. Robinson, constituting a minority of the committee, made a separate report less unfavorable to the Department, but recommended "that the Department be re-organized in such a way as to secure a proper degree of responsibility not only in the head, but in the subordinate brauches of the Department; and for that purpose the auditing of the accounts and *the final adjudication of them*, and the disbursements of

its moneys, should be confided to officers appointed by the President and Senate."

Senate doc., 1st sess., 23d Cong., No. 422, pages 31 and 274.

The attention of the President of the United States having thus been brought to the subject, he, in his annual message, in December, 1834, adopted the suggestions of the minority of the committee, and recommended that the Post Office Department "be re-organized, with an auditor and treasurer of its own, appointed by the President, who should be branches of the Treasury Department."

The committee of the Senate having further pursued their investigations during the recess of Congress, made their final report, by Mr. Ewing, their chairman, on the 27th of January, 1835. The report, after speaking of the numerous great abuses and evils which had grown up in the Department, proceeds as follows: "They may be principally traced to the absolute and unchecked power which a single individual holds over the resources and disbursements, and all the vast machinery of the Department. The checks of various inferior officers upon each other are of no value, *when all are guided and controlled in their acts by one dominant will.*" * * * * *

The committee recommended "a change in the organization of the Department, so as to place the collection and the disbursement of its funds in different hands, and under the control of officers entirely independent of each other." "That Department," say the committee, "as at present arranged, is a dangerous anomaly in our system; and by whomsoever its concerns are hereafter to be conducted, its organization ought to be changed, so as to conform more nearly to that of the other great Departments of the Government." Senate Doc., 2d sess., 23d Cong., No. 86, page 89.

Mr. Kendall, who had become postmaster general, in his annual report of December 4, 1835, strongly urged a re-organization, by law, of the financial branch of the Department. After speaking of several defects in the then existing system, he proceeds as follows:

"There is another feature in which the present organization of the Department is defective and unsafe. It is believed to be a sound principle, that public officers, who have an agency in originating accounts, should have none in their settlement. The War and Navy Departments are in general organized upon this principle. In the orders, contracts, and regulations of the Heads of those Departments, or their ministerial subordinates, issued and made in conformity with law, accounts originate; the moneys are generally paid by another set of agents, but partially dependent on the Heads of the Departments; *and the accounts are finally settled by a third set who are wholly independent of them.* If from any cause an illegal expenditure be directed by the Head of a Department, it is the duty of the disbursing agent not to pay the money; and if he does pay it, *it is the duty of the Auditors and Comptrollers to reject the item in the settlement of his account.* * * * The most important improvement required is to separate the settlement of accounts entirely from the Post Office Department, and vest it in an

auditor appointed by the President, with the advice and consent of the Senate." Ex. Doc., 1st sess., 24th Cong., No. 2, page 399, 400.

In pursuance of the foregoing recommendations, the act of July 2, 1836, entitled "An act to change the organization of the Post Office Department, and to provide more effectually for the settlement of the accounts thereof," was passed; which act provided for a separate auditor for that Department, who was authorized to settle all accounts accruing in the Department, subject to an appeal by either the Postmaster General, or the claimant, to the First Comptroller, whose decision was to be final.

Having, I think, satisfactorily shown by reference to the several acts of Congress on the subject, that neither the President nor Heads of Departments have any authority to direct or control the accounting officers in the adjustment of claims and accounts, and no authority to review their decisions, and that the jurisdiction of the accounting officers over such claims and accounts is final and conclusive upon all the Executive officers of the Government, and was designed to be so; that such jurisdiction, with one or two ill-advised exceptions, has been generally acknowledged and vindicated by the law officers of the Government, and is also sustained by long established practice; and that the public interest requires and demands that such jurisdiction should be preserved and maintained, I leave this branch of the subject without further remark.

I do not intend by any thing that has been said to intimate that the accounting officers are not, in any case, to regard the action of the Heads of Departments upon claims and expenditures. On the contrary, I admit and hold, that in all that large class of cases in which a legal discretion is committed to the Head of a Department, either as such, or as the proper organ of the President, the decision of such Head of Department, within the limits of his discretion, would be binding upon the accounting officers. It would be binding on them, not because of any jurisdiction in the Head of the Department over them in the adjustment of claims, but because their official duty requires them to admit and allow all claims which are legal, and the approval and direction of the Head of Department being in such case by authority of law, would make the expenditure a legal one.

Thus, in the case of the present claim, if the Secretary of the Interior had endorsed upon it his approval, and direction to have it paid out of the appropriation for the payment of the annuities to the Indians, and the claim were thus presented to the accounting officers for settlement, the first inquiry for their consideration would be, whether the Secretary had authority thus to direct the payment of the debt of the Indians out of the money appropriated by Congress in satisfaction of their annuities. If the accounting officers came to the conclusion that he had no such authority, it would be their duty to reject the claim. If they held that the direction of such payment was a matter within the authority of the Secretary, they would not inquire whether he had exercised his discretion judiciously, but would regard his act as making

the expenditure a legal one, at least to the extent of the real debt against the Indians.

The claim not appearing to have been acted upon by the Secretary of the Interior, it remains to be considered whether the approval and direction of the Commissioner of Indian Affairs makes it a valid one, upon the appropriation for the payment of the Indians' annuities.

It is insisted in the argument of counsel before mentioned, that the Commissioner of Indian Affairs, by virtue of his office as such Commissioner, has authority to decide upon the legality and propriety of all claims arising in the Indian department, and that his decision upon such claims is of binding authority on the accounting officers. This power is, in the first place, claimed to have been specially conferred by the third section of the act of 1832, which directs the Commissioner to make "administrative examination" of all accounts and vouchers for claims and disbursements connected with Indian affairs, previous to his passing them "to the proper accounting officer of the Treasury for settlement."

It seems quite apparent that the Secretary of War, who in obedience to the direction of the President prescribed the regulations of 1836, and which are still in force, for conducting this examination, did not understand it as superseding the authority of the accounting officers over the claims. The "administrative examination" is treated throughout those regulations as being preliminary, and in aid of the examination which is subsequently to take place at the Treasury. Thus, by the first paragraph of the 5th regulation, it is provided, that when the Commissioner deems a claim to be "*illegal*," or contrary to the regulations or instructions, or improper and unjust, "he will withhold his sanction, and state his objection for the *consideration of the accounting officers.*" By the second paragraph of the same regulation, the Commissioner is directed, after making an examination of the circumstances of any expenditure, "to annex such explanatory observations as may *the better enable the accounting officers to perform their duty*;" and the third paragraph provides that "where particular instructions authorizing the service or expenditure have been given, *and are necessary to a just decision of the matter, the proper extracts therefrom* will be transmitted by the Commissioner with the accounts."

These regulations appear to be entirely inconsistent with the idea that the examination of accounts and vouchers by the Commissioner, and his sanction or disapproval of them, was understood to constitute an allowance or disallowance, which was to be regarded as such by the accounting officers. The term "administrative examination," is believed never to have been understood as constituting a final adjustment of a matter, but to be applicable only to such preliminary examinations of accounts and expenditures as are made in the several bureaus of the Departments, for the purpose of promoting the due administration of the affairs under the direction of the bureau, and in aid of the subsequent examination by the accounting officers. Such examinations of accounts and vouchers have long been made in the several bureaus of the

War Department, such as the quartermasters', the medical, the engineers', and other bureaus, and have never been claimed or recognised as having a binding authority on the accounting officers. That such is the meaning of the term "administrative examination," will be seen by reference to Regulations of the Army, 1825, paragraph 299; Regulations of 1841, quartermasters' and other administrative departments; Regulations of 1847, page 185, note; also Mayo's Treasury Department, Supplement, page 116 to 120.

It is further insisted by the counsel for the claimant that the Secretary of the Interior, succeeding to the powers of the Secretary of War, had *legal authority* to direct the payment of the claim out of the annuity appropriation; that the Commissioner of Indian Affairs, in approving and directing the payment of the claim, is to be considered as representing the Secretary of the Interior; and that the Commissioner consequently had all the power over the subject that might have been exercised by the Secretary. For that reason it is urged that the decision of the Commissioner made the claim *a legal one*, and that it therefore ought to be passed by the accounting officers.

Whether the power of the Commissioner over the subject matter of this claim was co-extensive with that of the Secretary, must be determined by the laws and regulations.

The act of July 9, 1832, constituting the office of Commissioner of Indian Affairs, gave him the general management of Indian affairs and relations, "under the direction of the Secretary of War, and agreeably to such regulations as the President might from time to time prescribe." By the subsequent act, passed June 30, 1834, entitled "an act to provide for the organization of the department of Indian Affairs," the duties and powers of the officers of the department were more particularly defined, and by the 17th section the President was authorized "to prescribe such rules and regulations as he might think fit, for carrying into effect the various provisions of the act." This act, as well as the regulations of the President for carrying it into effect, contains many special provisions by which some powers are conferred on the President, some on the Secretary of War, and others on the Commissioner.

The authority of the Commissioner to direct the payment of the present claim, if it exists, must be found in the laws and regulations in regard to the payment of Indian annuities; for it is out of the annuities due the Indians by treaty, and out of the appropriation made by Congress for the payment of them, that the money is directed to be taken.

From the examination which I have made of the subject, I am of opinion that the discretionary power of determining the manner in which Indian annuities shall be paid, within the limits in which there is room for discretion, has by the laws and regulations been committed to the Head of the Department, and not to the Commissioner.

By the 11th section of the act of June 30, 1834, it is provided "that the payment of all annuities or other sums stipulated by treaty to be made to any Indian tribe, shall be made to the chiefs of such tribe, or

to such person as said tribe shall appoint; or if any tribe shall appropriate their annuities to the purpose of education, or to any other specific use, then to such person or persons as such tribe shall designate.

And by section 12 of the same act it is further provided, "that it shall be lawful for the President of the United States, at the request of any Indian tribe to which any annuity shall be payable in money, to cause the same to be paid in goods."

Regulation No. 30, of June 1, 1837, for carrying into effect the provisions of this act, is as follows, viz:

"The 11th section of this act permits any tribe to appropriate their annuities to the purpose of education, or to any other specific use. But the exercise of this privilege is dependent on the discretion of the Executive, and no appropriation of any part of their annuities can be made by a tribe under this section, *without the express sanction of the Department of War.*"

It will therefore be seen that no authority is given to the Commissioner, by the 11th or 12th sections of the act of 1834, to exercise any power whatever over the subject of the payment of annuities. Under the 11th section no tribe can make any appropriation of their annuities to any specific purpose "*without the express sanction of the Department of War;*" and by the 12th section no tribe can be permitted to receive their money annuities in goods, *but by direction of the President*.

I am not aware that there is any other act of Congress bearing on this question, except the 3d section of the act of March 3, 1847. That section, so far as it is applicable to the question now under consideration, is as follows:

"*And be it further enacted*, That the eleventh section of the 'Act to provide for the better organization of the Department of Indian Affairs,' approved June 30th, 1834, be, and the same is hereby, so amended as to provide that all annuities or other moneys, and all goods, stipulated by treaty to be paid or furnished to any Indian tribe, shall, *at the discretion of the President or Secretary of War*, instead of being paid over to the chiefs, or to such persons as they shall designate, be divided and paid over to the heads of families and other individuals entitled to participate therein; or, with the consent of the tribe, be applied to such purposes as will best promote the happiness and prosperity of the members thereof, under such regulations as shall be prescribed by the Secretary of War, not inconsistent with existing treaty stipulations."

It will be seen that the whole subject of the payment of Indian annuities, so far as this section is concerned, is committed to "the discretion of the President or Secretary of War;" the language, very clearly, as I think, excluding all idea that it could have been the intention of Congress to confer any authority whatever on the Commissioner.

I do not find that any regulations were issued by the President or Secretary of War for carrying into effect the provisions of this section, unless the instructions of the Commissioner of Indian Affairs to the officers of the Indian department, under date of August 30, 1847, are

to be understood as announcing such regulations. The following is an extract from those instructions:

"As the responsible guardian of the interest and welfare of the Indians, and in pursuance of the discretionary power vested in him by law, the President therefore directs that, hereafter, all annuities and other money and goods due the Indians be paid and distributed to heads of families, and to individuals without families, entitled to participate therein, unless a different mode of payment or distribution is expressly required by treaty stipulation; in which case, the views of the tribe in general council will be taken; and if the mode prescribed by treaty be insisted on, after a full explanation and due consideration, it will be adopted."

If this provision in the instructions of the Commissioner is to be considered as evidence of a regulation prescribed by the Executive for carrying the act into effect, as its language imports, it cannot, I think, be otherwise construed than as a positive prohibition against the appropriation of Indian annuities to any such purpose as that contemplated by the allowance of the present claim. But independent of this regulation, if it be one, there appears to me to be an entire want of authority in the Commissioner as such, to direct the disposition of the money appropriated for the payment of Indian annuities.

Whether the Secretary of the Interior, by virtue of the several acts of Congress which have been referred to, or of any other act, would have authority to direct the money appropriated by Congress for the payment of treaty annuities to be paid either wholly or in part to creditors of the tribe, is a question which I do not conceive arises in this case, and upon it I express no opinion.

I have now gone through, at much greater length than I at first intended, with an examination of the several questions arising out of this claim, and the grounds on which its allowance has been urged on this office. These questions, relating to the respective jurisdictions of the accounting and other officers of the Government, are questions of importance as well as of delicacy. I have no wish to claim any jurisdiction for the accounting officers that was not intended to be conferred on them by law, nor to deny any authority to any other officers of the Government that the law has confided to them. I have sought for the solution of these questions in the laws themselves, and have some confidence that I have arrived at correct conclusions. I shall, however, hold myself open to be convinced by argument, that my opinions are erroneous; and when thus convinced they will be cheerfully retracted and abandoned. Until then I hold it to be my duty to abide by and maintain them.

I concur with the Second Auditor that the claim ought not to be admitted, and affirm his decision disallowing it.

HILAND HALL,
Comptroller.

Hon John H Baker M.C. Elect Morse

SUPPLEMENTAL PETITION

OF

TOUSSAINT MESPLIÉ,

CHAPLAIN U. S. ARMY.

To the Honorable Senate and House of Representatives of the United States in Congress assembled, praying relief for acting as Indian Agent and Chaplain to the United States Army.

May it please your honorable bodies, believing that certain facts connected with my services to the United States, and for which I am now before your honorable bodies asking relief, can be more clearly set forth by a supplemental petition to the one now before you, I have to respectfully state:

That in 1849 I attended, as chaplain, at Fort Astoria, Captain Clebourne, commanding. I had been previously, and was at that time, engaged as a missionary among the Indians at the mouth of the Columbia river, Oregon. The post was at this time without a chaplain, and by the request of the officer commanding it I did, on each Sunday, and as often as my services were needed at other times, act as chaplain to the post; to do this I was, in addition to the service actually rendered, put to the inconvenience of crossing and recrossing the Columbia river, as my mission was situated on the opposite side to the fort. I continued to act as chaplain to the post of Fort Astoria from the spring of 1849 to the spring of 1851, during all which time the post was without any chaplain except myself.

In the spring of 1851 I removed to "the Dalles," Wasco county, Oregon. In my first petition I stated I removed to

the Dalles, in December, 1850. I find now that I was mistaken as to the month, as I reached the Dallas in February, 1851. I there took charge of "Old St. Peter's Mission" among the Indians of that region. The mission was situated close to the United States post of "Fort Dallas," which was, at the time of my arrival, in February, 1851, without a chaplain. I was invited and requested by the commandant of the post, Lieut. Gibson, (now dead,) to act in the capacity of chaplain to the post, to which request I acceded, and proceeded and continued to act as chaplain, rendering all the service usually rendered by a post-chaplain. I continued to act as chaplain at "the Dalles" from the time of my arrival at the post, in 1851, up to June, 1863, during all which time there was no chaplain except myself at the post.

During the time I was officiating as Chaplain at "The Dalles" I made numerous missionary circuits among the Indian tribes of the surrounding country, and while on these circuits, at the request of the various officers commanding, I officiated as chaplain at the following United States posts.

Camp Pickett, on San Juan Island, Washington Territory, commanded by Capt. Pickett, (now dead;) Fort Steilacoom, on Puget Sound, Washington Territory, commanded by Col. Casey, (now General Casey, U. S. A.:) Fort Yam Hill, Yam Hill county, Oregon, commanded by Capt. Russell. (At this post I became acquainted with the then Lieutenant now Lieutenant General P. H. Sheridan. See his letter accompanying my original petition.) Fort Haskins, near the Wallamet river, Oregon, commanded by the then Major now General Auger, U. S. A.; Fort Walla-Walla, Washington Territory, commanded by Col. Steptoe, (now dead;) Fort Simcoe, Washington Territory, commanded by Major Robt. Garnett, (now dead.)

At none of these posts was there a chaplain except at Fort Steilacoom. I officiated as chaplain a number of times at these posts, particularly at Fort Walla-Walla and Fort

Simcoe, and can refer to, besides the officers above named, General Smith, U. S. A., who I met at Fort Walla-Walla; General Black, U. S. A., who I met at Fort Simcoe. I officiated as chaplain a number of times also at Fort Cascades, on the Columbia river, Washington Territory, commanded by General Hardie, (now dead.)

For my services as chaplain at "Fort Dalles," I can refer to the following officers of the United States army: General Alvord, General Black, General Macfillie, Surgeon-General Barnes, Colonel Hodges, Surgeon Summers, and Colonel Copinger, besides many officers who I then met and who are now dead or have left the service.

In June, 1863, I went to Idaho to start a new mission, in the Boisé basin, Boisé county, among the Indians residing there, in that neighborhood and the surrounding country; my mission was situated about thirty-five miles from Fort Boisé, among the Shoshone Indians. Fort Boisé was commenced by the Government in the fall of 1863, and finished in the spring of 1864. There was no chaplain at the post, and at the request of Major Perry, the officer commanding, I acted as chaplain, visiting the post every two or three months, and spending several weeks at a time, holding religious services and acting as chaplain. Besides my regular vists I was frequently called to the post in cases of emergency, when the services of a chaplain was needed. I continued to reside at my mission, in the Boisé Basin, and to act as chaplain at "Fort Boisé" from the spring of 1864 up to the summer of 1868, when I removed my regular residence to "Fort Boisé," residing in the fort until June, 1870, during which time I acted as the regular post-chaplain, there being no other chaplain at the post. In June, 1870, I started on missionary circuit among the Indian tribes of Montana Territory, and the white settlers of the same country. During this circuit, at the request of the commanding officers, I officiated as chaplain at the following United States posts:

Fort Hall, Oneida county, Idaho Territory, commanded by Captain Putnam, (now out of the service and holding the position of sutler at Fort Walla-Walla;) Camp Douglas, Utah Territory, commanded by General Morrow, U. S. A.

I spent about a month acting as chaplain at these two posts. There was no chaplain at Fort Hall, and the chaplain at Camp Douglas at the time of my visit had resigned his position and ceased to act. In the winter of 1870 I returned to Fort Boisé, Idaho, and resumed my duties as post-chaplain, and continued to render such service until the latter part of January, 1871, when I left there for Washington city, D. C., on business connected with the Indians. After visiting said city and finishing my business, in June, 1871, I returned to Fort Boisé, Idaho, and recommenced my duties as chaplain.

The following officers of the United States army can testify to my services as chaplain at Fort Boisé: Major Reagen, (now out of the army and living near San Francisco, California;) Captain Hughes, Colonel Otis, (now at Fort Sully, Dakota;) Colonel O'Byrne, (now at West Point Academy;) Colonel Sinclair, (now on the retired list, living near New Rochelle, New York.)

In July, 1871, I left "Fort Boise," and removed to Fort Hall, Idaho Territory, commanded by Captain Putnam. Here I acted as missionary among the Indians, and, by the request of the commanding officer, as chaplain to the post, there being no chaplain at the fort, my time was equally divided between the Indian mission and the fort, which was situated about seventeen miles apart.

I remained at this post until December, 1871, when I came to Washington city, D. C., on business connected with the Indians, and in July, 1872, I was appointed by President Grant a regular chaplain in the United States army, which commission I now hold. I had become acquainted with President Grant while I was acting as chaplain at Fort Astoria, in Oregon Territory, in 1849, and also had met him

at Fort Vancouver, Washington Territory, in 1849 and 1850.

I should add that while I was acting as chaplain at Fort Boise I also visited, several times each year, Camp Three Forks, on the Owyhee river, commanded by Colonel Copinger, and acted there as chaplain.

I have not stated herein the many great and important services rendered by me to the United States in pacifying hostile Indians, retaining the friendship to the Government of tribes which were wavering, and supplying important information to the officers of the United States army whereby large amounts of Government property were preserved, vast sums of money and many lives saved. For all of these services I refer to my first petition to your honorable bodies to which this is supplementary.

I have in this petition briefly shown your honorable bodies that since the year 1849, up to the month of July, 1872, I have rendered a continuous and almost uninterrupted service to the United States, by acting as a chaplain in the army among the posts of the Northwest, where but for my labors religious services would have never been held, the soldiers would have been exposed to the demoralizing effects of a frontier garrison life without the restraining influence of the Christian religion, the sick would have died without the consolation of a minister of God, and the dead would have been buried without the last rights of a Christian Church.

These services I have rendered, and they are of a class which the Government recognizes, and for which it gives compensation. I therefore petition your honorable bodies to grant me compensation for the services rendered by allowing to me what the Government would have paid me had I been, during the time stated, a regular chaplain in the United States army. I have performed a chaplain's services and ask only a chaplain's pay. I ask this because I have rendered the services. I ask it because the best years of my life have been spent on the frontiers and in the

extreme west, laboring among the soldiers of the garrisons and the Indian tribes, preaching and teaching peace to the latter, and leading them, through the Christian religion, to friendship and good will to the whites. I ask it because I find myself, after all my labors, in the decline of life, and in need of the compensation I have honestly earned.

TOUSSAINT MESPLIÉ,
Chaplain U. S. Army.

APPENDIX.

HEADQUARTERS MILITARY DIVISION OF THE MISSOURI,
Chicago, Illinois, Nov. 10, 1873.

DEAR SIR: Referring to the contents of your letter of the 6th instant, I have to state that I knew the Reverend Father T. Mesplié, of Fort Boise, Idaho, years ago. I know that at various times he rendered valuable services to the Government, and did many things for the best interests of both the white settlers, the Army, and the Indians.

I always regarded him as a thoroughly reliable man, and he has a most excellent reputation among those who have known him on the frontier.

I am, sir, very respectfully, your obedient servant,

P. H. SHERIDAN,
Lieutenant General.

WASHINGTON CITY,
March 15, 1878.

To whom it may concern:

I have known Reverend Father T. Mesplié personally and by reputation for more than twenty years. He was formerly located at the Dalles, on the Columbia river, on the east side of the Cascade mountains, at which point a military post was located; and was, also, one of the principal gathering places for the Indians of Eastern Oregon and Washington Territory. Father Mesplié acted as chaplain for the various military posts in Eastern Oregon and Washington Territory, besides acting as a missionary among the Indians, and did more than any other one man in preserving peace in that vast region of country between the white settlers and the Indians. He was active and energetic in his work, and was considered by the Indians as authority in all matters of dispute between themselves and the whites.

For the past five years Father Mesplié has been United States Army chaplain at Fort Boise and other posts in Oregon, Idaho, and Washington Territory, and has been paid for his services for *that* time, but he has received *no* compensation for the many years of hard labor performed by him before his regular appointment as chaplain.

I think it would be but an act of justice to pay him for the services rendered by him at a time when they were so much needed.

I am, very respectfully,

D. P. THOMPSON,
Ex-Governor of Idaho Territory.

WILLARD'S HOTEL,
Washington, D. C., March 16, 1878.

HENRY WISE GARNETT, ESQ.:

DEAR SIR: I have personally known Father Mesplié ever since 1854, in Oregon, Washington Territory, and Idaho, where I have lived most of the time since that date. Father Mesplié has been an active missionary among the Indians in that country, and with great success in keeping down the Indian hostility toward the whites on the frontier. It is beyond question that he is the most popular missionary among the Indians that we have ever had in that country, and has never failed to use his influence in behalf of the pioneer settler. By and through him, in my opinion, hundreds of thousands of dollars have been saved to our Government in keeping the Indians quiet. And if there is any way whereby our Government can pay Father Mesplié for his many years' labor in that direction, it would only be an act of justice for which the people of Oregon, Washington Territory, and Idaho would be glad to see done.

Besides this, Father Mesplié has acted as chaplain at the various military stations in Oregon and Washington Territory, east of the Cascade Mountains, and in Idaho. He also acted as chaplain for the military stationed at Astoria, mouth of the Columbia river, as early as 1849. If for no other labor, it does seem as though he should be paid for his services as chaplain at the various military posts for which he has acted. It might be urged that he was not regularly ap-

pointed chaplain, but if a man renders good service the only right thing to do is to pay him for it.

Respectfully yours,

A. P. MINEOR.

WASHINGTON, D. C., *March* 14, 1878.

To whom it may concern:

I have been personally acquainted with Rev. Father T. Mesplié since the year A. D. 1853. Since I have known him, and for many years before, as I am creditably informed, he has spent most of his time laboring as chaplain with the United States troops and the wild Indians of the Western Territories. He has done more good in civilizing and christianizing the wild, savage Indians of Oregon, Washington, and Idaho, than any other person. He has settled many disputes, and saved the loss of life often between Indians and whites. His services have been of great value to our people and our Government, but of no pecuniary reward to him, as I understand he has received but a very small compensation from our Government for his services Now that he is old, and spent most of his life for the good of our people and our Government, without pecuniary reward to himself, I think it just and right that the Congress of the United States should appropriate a sufficient sum of money for him to keep and maintain him the remainder of his life.

Very respectfully,

JOHN HAILEY,

Ex-member of Congress, Boise City, Idaho Territory.

Personally appeared Isidor Beauchamp, who, being duly sworn according to law, doth depose and say: I arrived at The Dalles of the Columbia river in 1855, and was enlisted as a volunteer, and ranked as orderly-sergeant, and remained two or three weeks at The Dalles. During this time I have heard the Yakama Indians firing across the narrow stretch of water between us and them. The Yakama Indians were then hostile. During my stay I frequently saw the Reverend Father Mesplié at our camp. I asked him if there was no danger of the Wasco Indians joining the hostile Yakamas.

"O, no," he said, "I am constantly among them, and intend to keep them peaceable." He at the time observed that one of the Wascoes was disposed to join them, but that he (Father Mesplié) had dissuaded him, and had stripped him of all his fire-arms and ammunition. I returned to The Dalles in 1857, and wintered there. During my stay there I saw the Reverend Father Mesplié acting as a missionary to the Waseo Indians and other Indians that had centered at the Dalles, and the Reverend Father kept them peaceable, and also among the soldiers he made frequent visits, which caused me to ask him if he was paid for acting as their chaplain, and he told me that all this was voluntary on his part, that he did not receive a cent. During the summer of 1858 I came up to the Walla-Walla Valley, and got my discharge, while Colonel Steptoe was in command of Walla-Walla, and I then settled in this valley, where I have ever since resided. It was not long after that that the Reverend Father Mesplié, in company with the late Rev. Father De Smit, arrived on a mission of peace, to go among Indians that were then hostile. Both of these Reverend Fathers called at my house. Father Mesplié then told me that he was accompanying Father De Smit to the various tribes of Indians with whom he was acquainted, in view of keeping them quiet, and not go with the hostiles, and that he, Father De Smit, had been employed by the Government to do this. After his return from this trip he frequently visited me, and informed me that as there were a good number of Catholics at this garrison, he had to, and did, officiate as chaplain at the post. I saw him baptize children at the garrison. From what I saw the Reverend Father Mesplié do at The Dalles of the Columbia and at Fort Walla-Walla, I am satisfied that he did exert great influence over all the Indians in his jurisdiction.

ISIDOR BEAUCHAMP.

Subscribed and sworn to before me this 16th day of December, A. D. 1873, at Walla-Walla, Wash.

[SEAL] J. M. VANSYCKLE,
Notary Public.

William Kohlhauff, being first duly sworn, doth depose and say: I arrived at The Dalles of the Columbia, 1856. I then found Father Mesplié there, acting as a missionary for

the spiritual wants of Indians and soldiers. I was at that time a soldier belonging to Captain Dent's company, Ninth Infantry. In 1857 we left The Dalles and came to Walla-Walla. I, in conjunction with other soldiers who were Catholics, was sent by a teamster to The Dalles for Father Mesplié, and he came up and remained at my house, and I fixed up, by order of Colonel Steptoe, a place for Father Mesplié to officiate as a missionary. I also saw Father Mesplié act as chaplain, by request of Colonel Steptoe, for the post at Walla-Walla.

WILLIAM KOHLHAUFF.

Subscribed and sworn to before me this 3d day of January, A. D. 1874.

[SEAL.] J. M. VANSYCKLE.

IN THE MATTER OF

HOUSE BILL No. 620,

FOR THE RELIEF OF

REDICK McKEE,

Now pending before the Senate on a motion to Reconsider.

LETTER FROM THE CLAIMANT

TO THE

SENATORS OF THE UNITED STATES.

Beresford, Pr., 523 Seventh St.

WASHINGTON, D. C., *November* 15, 1876.

To the Senators of the United States:

On the last afternoon of your late session House bill No. 620, for my relief, was called up by Senator Sargent, of California, and read a third time, but on the final vote was disagreed to by yeas and nays 23 to 16. Afterwards a motion to reconsider was entered by Senator Howe, and the matter will come before you again during the approaching session.

While I have no doubt that those in the negative voted conscientiously, I beg leave to say that, in my opinion, they did so under an entire misapprehension of the case; and lest the remarks made by Senators Edmunds, Ingalls and Howe may have left on the minds of some who do not know me an impression that I was or am capable of asking the passage of a bill to pay an unjust or even a doubtful claim, I feel called on to submit a brief statement explanatory of the whole case. My personal interest in the result has made me a close observer of all the proceedings, and my recollections are quite vivid. Grant me a patient hearing.

In objecting to the bill Mr. Edmunds said: "*I suppose the Senate is aware that this is an old matter which has been decided by the Senate a good many times.*"

Mr. Ingalls said: * * * "*It is a claim of very venerable antiquity. It has passed the ordeal of repeated examinations through the Department of the Interior and now comes to us, as it has always seemed to me, in very questionable guise, &c.*"

Senator Howe was less positive, but his recollection was that "*this case has been once or twice before the Interior Department by act of Congress, with full power to the Department to allow all that ought to be paid, &c.*"—(See Record, pp. 91, 92.)

Now, strange as it may appear, those usually accurate Senators were all at fault in their recollections or impressions touching this case.

The particular grievances complained of in my memorial, for the examination and settlement of which the House bill provides, had never before been brought to the direct attention of the Senate; nor had Congress ever given the Department of the Interior authority to examine and settle the same "on principles of equity and justice," or otherwise.

Other branches or schedules of accounts growing out of my *dual* office (as commissioner and disbursing agent) had been at different times acted on and settled *at* the Department, but those in question never were settled, partly for want of authority, partly for lack of funds. In reports made by Commissioners Dole, Cooley, Parker and Taylor, to Secretaries Harlan and Browning, they are referred to as being meritorious and deserving of redress, but the Department could not give it, and I was advised to petition Congress for relief. Accordingly I prepared a memorial in January, 1866, which, by the Senate, was referred to its Committee on Claims. There was, I believe, some correspondence on the subject between the Committee and the Department, but no formal action was taken till 1870, near the close of the 41st Congress. I had repeatedly sought opportunity to go before the full committee to explain some matters only briefly alluded to in my memorial, and others which in the hurry of its preparation had been wholly omitted; such as a claim for extra mileage, loss on currency, interest paid on a loan in San Francisco, &c., especially the latter, but the pressure upon the time and attention of the Committee was so great that the hearing was not obtained. I certainly expected to be informed when the case could be taken up.

As the session was drawing near its close I made a personal appeal to that able and industrious Senator, Mr. Scott, of Pennsylvania, and was promised that if possible he would look into the case before adjournment. He did so, and at a late hour of the night, (as he afterwards informed me,) prepared a report (No. 20) coupling mine with two other and entirely distinct California claims, (those of Estell and

Dela Toba,) to accompany joint resolution No. 27, appropriating for my relief $7,424 59, the exact balance which the Second Auditor, in a "statement of differences," (August 4, '65,) reported as "suspended, or disallowed," by the Indian Department in one of my accounts, rendered in 1852–3.

This statement from the Second Auditor, being the only paper then filed in my case in the nature of an account, Mr. Scott, perhaps, naturally enough, treated it as showing my claim. The question of *mileage*, he suggested, might be examined by the Secretary of the Interior, (but no separate provision was made by the accompanying joint resolution for an allowance); that about *exchange* was passed over; and, touching *interest*, he said: "The petitioner also claims interest. * * * The Department having found enough in the accounts, as at first presented, to suspend or disallow them, we do not think the Government should be held for interest," evidently referring to the allowance of interest on the amount of the suspended items.

Under Joint Resolution No. 27 (approved June 23, 1870,) Secretary Cox paid me, in July following, the precise sum of $7,424 59.

I thought this should have been made payable in coin or its equivalent, with interest, as my disbursements had all been made *in coin*, and the rulings of the Interior Department had kept me out of the money for near twenty years, but the Committee had not so recommended.

It was some gratification, however, that the correctness of my account, rendered in 1852–3, was at length conceded, and that some relief was at hand, although currency was worth but sixty or seventy cents on the dollar; and especially as this payment recognized the proper disbursement of the money borrowed in San Francisco, and paved the way for my claim for the amount *I had paid out for interest in carrying that loan for many years.*

This is the only act ever passed by Congress (both houses) for my relief, and so far from "*giving the Department full power to allow all that ought to be paid, &c.*," it expressly limited the Secretary to the sum above stated.

My expenses being large and my necessities great at the time, I was forced to accept the amount offered as "*in full discharge of the claim*," but I knew that Congress had never condescended to plead the statute of limitations, or *res adjudicata*, to avoid the re-examination and payment of a just claim, and I thought I might rely on getting full justice at a later period.

Among other precedents bearing on this point, I may cite the act for the relief of Theodore Adams, of Pennsylvania. Mr. Adams was, during the war, a contractor with the Navy Department, and claimed that a large sum was due him, but the Department cut down his claim to $38,000, to get which, and avoid bankruptcy, he signed a receipt, "*in full of all claims against the United States.*"

Aggrieved, he appealed to Congress, and after a rigid examination and debate in both houses a bill was passed by a large majority, allowing him the *additional* sum of $112,740 76. (Statutes at Large, 1873, p. 77.) Numerous other cases might be cited were it necessary.

When Congress met again, in 1871, I prepared another memorial, which was printed by the House, (Misc. Doc. No. 102,) in which I detailed at considerable length my arduous and responsible duties as Commissioner and Disbursing Agent in California; the embarrassments and losses to which I had been subjected by the failure or neglect of the Indian Department; the pertinacity with which I had pressed the Department and Congress for a settlement of my accounts, &c., closing with an earnest appeal for redress; but if my memorial was read it was not acted on during that Congress.

When the 42d Congress assembled I withdrew the papers from the files of the Senate, and had them referred by the House to its Committee on Claims, but with no better success. Towards the close of the second session of that Congress, however, after much importunity, the Committee did report, recommending a reference of the whole case to the Secretary of the Interior for examination and settlement, and the House passed a bill to that effect on the 19th of March, 1872. (H. R. No. 2,040.)

In the Senate this bill was referred to its Committee on Claims, but there was no action on it during the session. Toward the close of the succeeding session the papers were referred to Senator Meacham, of Kentucky, as a sub-committee That gentleman, after corresponding with the Department, prepared a report recommending concurrence with the House, but, unfortunately, the bill and his favorable report upon it, were not placed upon the Senate's calendar till the very last day of the session and of the Congress—too late for action—and so the action of the House went for nothing, and I was left to commence again at the foot of the ladder, in the following Congress.

When the 43d Congress assembled, I had the papers referred by the House to its Committee on Claims. I importuned that committee to act upon the case, but again failed to secure attention. During the second session of that Congress, on the suggestion of the Hon. J. B. Hawley, chairman, I prepared and had printed a letter in further explanation of my claims for money advanced in San Francisco, &c., &c., and, in an appendix, with certain affidavits, inserted letters from Senator Gwin and several other distinguished officials and ex-officials, who were in San Francisco at the time of the transactions described, with whom I had constantly consulted, and who, in view of the alarming probabilities of an Indian war, cordially advised and approved of my action; but if my own and their statements were even read by the members of the committee, nothing final was done.

When the 44th Congress met the work had all to be gone over. Aware of the crowded docket of the Committee on Claims, I got the papers referred by the House to its Committee on Indian Affairs. In that committee the case received attention. Mr. Seelye, of Massachusetts, and Mr. Lane, of Oregon, as a sub-committee, examined the evidence, and were instructed to report to the House bill No. 620, which, after discussion, was passed by the House on the 7th of April, 1876. (Congressional Record, April 8, pp. 21, 22.)

After consideration in the Senate Committee on Indian Affairs, the bill was reported back by Senator Bogy, of Missouri, without amendment, acted on, as above stated, and is now awaiting the final vote of the Senate.

After being thus bandied about between the two Houses, and their committees, session after session and year after year, it is no wonder the claim and the name of the claimant should have become, to the older Senators, somewhat familiar, and this fact doubtless led to the suggestion that the claim "*had been decided by the Senate a good many times*," while the records fail to show that it was ever decided at all.

Having thus traced the history of the claim in the Department and in Congress during the last decade, as it is a very extraordinary case, and as many Senators may not have read my memorials, etc., in order that all may understand it, I beg your indulgence while I re-state, as briefly as possible, the grounds upon which it rests. "*I speak as to wise men; judge ye what I say.*"

1. I was chairman of the Board of Indian Commissioners—appointed by President Fillmore, in 1850—to go to California, under general instructions, to collect information and report as to the number, character and condition of the Indian tribes; to assure them of protection and assistance if they were peaceable; to allay, if possible, the disturbances which were said to exist in the mining districts at the time, and to negotiate such treaties as we might deem judicious for securing peace in the future.

2. The Senators from that State, Messrs. Gwin and Fremont, urged our immediate departure, for, by late advices, a general Indian war was imminent. The Government having no fiscal agent on that coast, I was strongly urged by those Senators, and by the Commissioner of Indian Affairs, to accept the *additional* appointment of purchasing and disbursing agent of the Commission, which office, unfortunately, (for myself) I accepted.

3. It was notorious that the first appropriation for the expenses of the Commission was wholly inadequate, but I

was assured by those Senators, by the Secretary of the Interior, and by the Commissioner of Indian Affairs, that soon after the next meeting of Congress, in December, at least $100,000 more would be remitted to me at San Francisco.

Having filed a bond, with approved security, I drew the money appropriated, remitted $2,000 to each of my colleagues (one in Kentucky, the other in New Orleans,) for outfit and expenses; and, after buying some $6,000 worth of goods in New York, (blankets, &c.,) for presents to the Indians, sailed for the Pacific, relying on the assurances given me as to an early remittance, and without the least misgiving as to their fullfilment.

How all this eventuated will appear as we proceed.

During the next session of Congress, the Commissioner, Colonel Lea, wrote to me at San Francisco, that the Committee on Appropriations had reduced his estimate for the service in California from $100,000 to $75,000, and I must be governed accordingly. This was unexpected and discouraging, for our expedition to the San Joaquin had already exhausted our exchequer, and left the commission in debt to a considerable amount for indispensable supplies. However, I immediately notified my colleagues to make no more large contracts, intending, if possible, to keep within the letter of my instructions. I reported fully to the Department by almost every monthly mail, but got no more *letters* for several months. At length I received from the Commissioner a Washington *newspaper*, containing the Indian Appropriation Bill, which gave me the first intimation that Congress had actually cut down the appropriation to less than one-half of what had been promised, and what, in my judgment, was really necessary. My colleagues, were in distress for money to pay expenses, and an escort of United States troops, had been in readiness, for several weeks, to accompany me to the Klamath country: the public press was filled with criticisms, on the neglect of the State authorities, and especially of *the United States Commissioner*, for not taking measures to protect the miners, &c., in that section, where

war already existed. In these circumstanecs, I applied to Mr. King, Collector of the Port, to advance me the sum of $30,000, or at least, a part of that amount, in antieipation of my receipt of the reduced appropriation which Congress had actually made, and he finally assumed the responsibility of advancing me in all $6,000, for which I gave him drafts on the Department. I paid my colleagues (for salary and expenses,) and some other pressing debts, which left me but little for the expenses of my proposed expedition. However, I started early in August, supposing that, of course, my drafts would be paid at Washington, for being the bonded agent of the Department, I had *a right* to the control, for disbursement, of whatever money Congress had granted for this special service. I may as well say here, that the total sum appropriated for 1851 and 1852 was $42,250, thus.

For arreages of salaries, - -	$6,750
For salaries, three Commissioners -	9,000
For salaries, three interpreters, -	1,500
For holding Treaties, - - -	25,000
	$42,250

(Stat. vol. 9, pp. 545, 572, 575.)

This sum was available to the Department in *February*, 1851, and should have been remitted to me in *March*, or at farthest in *April;* yet no part of it reached San Francisco till *August*, after I had started north, *and then but* $27,500 *were sent to me!* This neglect, omission, mistake, or whatever else it may be called, was on the part of the Department wholly inexcusable, and was the prime cause of all my subsequent embarrassments and losses.

What was done with the balance of the appropriations ($14,750) retained at Washington I was never advised. No part of it reached my hands, and even my drafts in favor of Mr. King were allowed to go back *protested!*

I have lately heard that $5,000 of the amount were remitted to the two other Commissioners, operating in different

parts of the State, on account of their salaries. If so, it was done in disregard of my rights and in forgetfulness of the fact that *I had been expressly instructed by the Department "to pay my colleagues their salaries, and all other expenses of the Commission."* (Senate Ex. Doc. No. 4, p. 8.) I had already paid them both, partly with the money borrowed from Mr. King.

The collector had assumed a grave responsibility in loaning me Government money, and I felt in honor bound to protect him. I had no doubt (nor had my friends any doubt) that on receipt of my dispatches the Department would remit the balance of the appropriations; and I succeeded in obtaining from banks for sixty days the amount of the returned drafts ($6,000) at two and one-half per cent. per month interest. But my letters were not answered, and when my notes matured I was as badly off as ever; nay, even worse, for to get an extension of time from the banks I had to mortgage my homestead property and bind myself to pay the interest ($150) *monthly, in gold.* In this way I carried the loan for more than two years. That I felt aggrieved and indignant, you may well imagine; but I had no present recourse. My appeals brought no response or explanation.

5. In the fall of 1854, money being scarce, and worth three to four per cent. on the street, the loans were called in, and the mortgage would *then* have been foreclosed had not my friend, General Sherman, a partner in the bank of Lucas Turner & Co., kindly advanced the amount on the same security and at the same rate of interest. I continued able to pay the interest promptly till 1858, when he turned over the business of the bank to Wm. Blanding, Esq., the debt being then $6,200 or $6,300. Mr. Blanding was aware of my claim, and of the passage of a bill *by the Senate* for my relief, and indulged me as long as he could; but receiving orders from St. Louis to close up the business of the bank, he reluctantly foreclosed the mortgage, and in October, 1863, my dwelling house and four valuable city lots were sold by the sheriff to pay the debt, which by that time had grown to $15,168 20.—(Vide Transcript Twelfth District Court, S. F.)

Such was my requital for faithful services as a Government officer.

6. In explanation of the exigeney in which I was led to borrow money from Mr. King to sustain the credit of the Government, (represented in a measure by the Indian Commissioner,) and possibly avert the expense and calamities of a threatened Indian war, I refer with confidence to the papers filed in the case, partieularly to the letters of the—

Hon. Allen A. Hall, of Vermont, Judge of the Land Commission.

Hon. Samuel D. King, Surveyor General of California

Hon. James Wilson, ex-U. S. Senator, of New Hampshire.

Hon. Thomas Butler King, of Georgia, Colleetor of the Port, S. F.

Hon. Wm. M. Gwin, of California, Senator.

Hon. D. N. Cooley, Commissioner of Indian Affairs, Iowa.

Hon. E. F. Beall, Superintendent of Indian Affairs, California, and

Gen. W. T. Sherman, U. S. Army, Washington, D. C.

As Senator Gwin had aided me in getting the original loan from Mr. King in 1851, and afterwards interested himself in the passage of bills for my relief in the Senate, I wrote to him for *his* reeollections of the case. The following is his reply:

GWIN MINE, CALAVERAS COUNTY, CAL., *Oct.* 26, 1874.

DEAR SIR: In your note of the 23d instant, you call my attention to your elaim against the Government, which has been before Congress for so many years. It was thoroughly examined in 1858 by the Senate Committee on Indian Affairs, which resulted in reporting in your favor a joint resolution, which *twice* passed the Senate, but was not aeted on in the House of Representatives. There can be no contest in regard to the faets. The money was used in the public serviee, was borrowed in good faith, and expended in good faith. The Government is not in the habit of paying damages or interest, but it did in Fremont's case, and yours is mueh stronger than his. Lay the proceedings of the

Senate in that case before the Committee on Claims, and in my judgment it will result in getting a report in your favor.

Very truly yours,

WM. M. GWIN.

Colonel R. McKee.

From remarks made in the House and Senate when this case was referred to, it would seem that very little is known or remembered, about the labors and responsibilities of the Indian Commissioners sent to California in 1850. They are represented by some as mere *ordinary agents*, whose duties were *routine, well defined and of no great public importance.* I seize the occasion to say that this is unjust, alike to the Commissioners and to history.

When we reached that country the public mind, particularly on the southeast border of the State, was in a high state of excitement. The Indians, who for generations had occupied the country, had been rudely driven from their accustomed hunting and fishing grounds and acorn orchards by the whites in quest of gold. Many had retreated to the mountains, but were making frequent raids or incursions in the vallies and mining camps, as they alleged, to get food and avoid starvation. Ranche owners and miners were alike in constant dread. The driving off of cattle, horses, &c., house burnings and murders were of almost daily occurrence The Governor had called out three or four hundred volunteers under command of Col. Johnston, and a general war seemed imminent. After consulting with the State and military authorities, the Commissioners, under an escort of four companies of United States troops, interposed. With much difficulty they got the most troublesome tribes to meet them in council; and, finally, under Providence, were successful in allaying the threatened storm and in restoring peace to a large extent of country. They had to furnish those Indians with immediate supplies of food, and assure them that all white men were not their enemies or disposed to disregard their rights, and especially that the Government at Washington desired their welfare; that we would arrange for their removal to new homes outside of the mining districts, and that for a year or two at least the Government would provide them rations of beef and flour, establish schools, &c., &c. This

pacific policy was adherred to in all our subsequent treaties, and although but partially carried out, it has happily preserved the peace of that frontier from that day to this. The State troops were soon after disbanded; the Department at Washington approved our action in a complimentary letter, and the public press and people of the State very generally approved it also. Its leading features were the collection of the Indians on separate reservations, (as far as possible from mining camps,) with a view to the breaking up of their tribal customs; teaching them their personal and family rights in acquiring and enjoying property in severalty; the instruction of the young in schools, and the older in agriculture and other arts of civilized life. *This policy*, I submit, *was first inaugurated and practically adopted, by our Commission on the Pacific coast*, and, I am happy to know, is the base or starting point of *our present governmental peace policy.*

I claim, also, some credit for the success of my expedition in the Northern District, where alarming disturbances had occurred. That district, lying west of the Coast Range, from the Bay of San Francisco, on the south, to the Oregon line—especially north of Humboldt Bay—contained a large population of Indians, large in stature, healthy, intelligent, fearlessly independent, and every way superior to the Root or Digger Indians, of the plains, or the Mission Indians, of Southern California. With an escort under command of a judicious and excellent officer, (Major H. E. Wessells, of the United States Army,) I visited and explored that district in the fall of 1851. The *first reliable map* of that part of the State was sent by me to the Department. It was made by George Gibbs, Esq., of Oregon, who accompanied the expedition as topographer and interpreter of *Chinook.* The discovery of gold on the bars of the Klamath and its tributaries was followed by a rush of adventurers from Humboldt Bay, Trinidad, Port Orford, &c., among them several reckless, dissipated characters, who disregarded alike the rights of the Indians and the safety of the whites. Quite a number of the natives had been killed, and at least one Rancharia burnt and the inhabitants driven off. When we reached Weishpeck, on the Klamath, the Indians were greatly exasperated, and had already resorted to the *lex talionis.* The miners and traders were in constant dread of a terrible retribution, and hailed our arrival with joy.

The coming of the *United States Commissioner*, with troops, —mules ladened with presents—a large drove of cattle, &c., had the effect of intimidating the indians, and reassuring the *Bostons*, (as all white men are called in that country.) At first, but few of the chiefs would visit our camp; and more than a week passed before the *Waga*, (or big chief, President or King, elected by the chiefs, of all the tribes on the river,) could be induced to do so. He told our interpreter that, the *Bostons* had talked with a "forked tongue," and while some had professed friendship, others had killed a number of his people, destroyed their fish dams and other property, and he supposed we were like them. Kind treatment, presents, and assurance of the friendly purposes *of our chief or Waga at Washington*, however, at length prevailed; the old Waga, and his chief men came in; admitted that peace would be much better than war for both parties; and agreed to make a bargain, or treaty, to that effect, but did not see how anything of that kind could be done just then. We asked, why not *then?* In explanation, the old chief drew from his belt and handed me a flat bone, some eight or nine inches in length, with notches cut on either side, showing that since the *Bostons* came, twenty-seven indians and only twenty-six whites *had been killed; we*, consequently, *owed him one man!* This was a difficulty which, upon the Indian's theory of justice or religion, seemed to render the making of any bargain or treaty of peace, impracticable, until the account was in some way balanced. Fortunately, after several *pow-wows*, the difficulty was overcome, and a compromise effected. Runners were sent out to find and bring in, by order of the Waga, the family and immediate friends of the last Indian killed. In three or four days they arrived in force, men, women, children, ponies and dogs; matters were explained, the family were satisfied, and, with the approval of the chiefs, I paid the debt and balanced the account, with one fat bullock, six Mackinaw blankets, calico and shawls for the women, red shirts for the men and boys, and a half dozen of handled axes, to aid in rebuilding a Rancharia on the river.

A treaty was then prepared and signed, a big feast was given, presents distributed, peace proclaimed; and on the next day we crossed the river and commenced our tedious journey in the direction of Scott's Valley and Mount Shasta; where a meeting with the chiefs of twenty-four

tribes on the Klamath and its tributaries had been agreed on.

These digressive remininsences are given to show that, whatever may be thought or said, by gentlemen in Congress or elsewhere, my mission in California was far from being a *sinecure;* or my duties common or unimportant. They involved exposure by flood and field, and responsibililies of no ordinary kind, ending in loss of both money and property.

(For full particulars of this expedition, see Journal, printed by order of the Senate, extra session, 1853, document No. 4, pages 133–187.)

Suffice it here, that though laborious and expensive, it was on the whole, eminently successful, peace was restored, business revived, immigration to the rich vallies followed; and for twelve or fifteen years, no more blood was shed, or serious disturbances experienced in that district.

It is my opinion, and that of many others, that if the treaty we made in Scott's Valley, November, 1851, had been faithfully carried out *on our part*, the unfortunate Modoc war would have been averted, the loss of many valuable lives and millions of money would have been saved to the country.

In several of my reports to the Department I endeavored to impress upon the Government that it was not only more humane, but vastly cheaper, to feed than to fight those California Indians.

Touching my embarrassments and losses, let me for a moment recur to the circumstances and resulting facts, which the evidence will verify:

The failure of the Indian Department to remit funds appropriated by Congress for the service in California makes its necessary that its agent shall borrow $6,000, which sum he disburses in good faith; more than one-third of the appropriations ($14,750) is withheld by the Department, and yet his drafts for $6,000 are returned protested. Meanwhile, interest on the money borrowed is accumulating at a fearful rate, and finally the agent's private property is sold under execution to pay the debt! After all this the Government discovers that the agent's accounts were correct as originally reported; the suspended items are allowed, and the amounts paid, viz:

In 1865, (on a partial settlement by the Department) after some 12 years' delay, - - - - -	$2,234 57	
In 1870, (by act of Congress) after some 17 years' delay, - - -	$7,424 59	$9,659 16

This amount, if due at all, was due when the agent retired from the service and turned over the office to General Beall, (October 1, 1853,) and should have been paid out of the appropriations for 1852. In that event the loan of $6,000 would have been *paid;* the agent would not have been forced to *advance* a large sum for interest *in carrying that loan* for many years; his private property would not have been sacrificed to pay the debt; he would have been saved long years of anxiety and embarrassment, and Congress the trouble of reviewing the case.

The bill before the Senate is an exact copy of No 2,040, passed by the House during the 42d Congress, and proposes to refer the whole matter to the untrammelled decision of the Secretary of the Interior. If the Senate shall repose equal confidence in that high officer, allowing him to settle the case on principles of equity and justice, I will be content, and it will no longer encumber your calendar.

If the foregoing summary shall be verified by the testimony, have I not presented a case of great hardship and injustice on the part of the Government, which should be investigated and redressed without any more delay?

I have the honor to remain,

Your fellow citizen,

REDICK McKEE.

L. M. BLACK

vs.

McCAULEY AND CAVANAUGH.

———:o-:———

WASHINGTON D. C., *June* 14*th*, 1871.

TO THE PEOPLE OF MONTANA.

Since leaving Montana, I am informed that I have been the object of a violent and abusive personal attack from James M. Cavanaugh, late delegate in Congress from our territory. In a dispatch sent you on the 12th instant, I denounced him to the people of Montana, as he properly deserves. I now wish to expose more directly the falsity of his charges against me. I understand that Mr. Cavanaugh bases his charges upon the letter of M. M. McCauley, late Indian Agent at the Blackfoot Agency, to the Commissioner of Indian Affairs, dated February 13th, 1871; that letter contains the following statement in regard to myself:

On the 9th day of December last I received at this agency five and one-half tons of Indian goods, valued, as per invoice, at $7,620 04. These goods consist of blankets, clothing, and hardware, for the Indians. These goods were furnished, I believe, by Mr. L. M. Black, but am not positive, as I never receipted for them to any one, except to sign the bills of lading of the wagon-train. These are all the goods received by me. These goods arrived here during my absence, and the wagon-master that brought them told my employés that "Mr. Garrison (the owner of the train) had received from L. M. Black one-half of the freight money on fifty tons of annuity goods from Corinne, Utah Territory, to this agency;" and further said, that if I did not receipt to Black for the full amount, I would lose my head.

On or about the 25th of November last I received a letter from Superintendent Viall, dated "Bozeman, Montana

Territory, November 23," requesting me to be in Helena by the 1st of December, "before *parties* left for Washington;" in response to which letter I hastened to Helena. On the 2d day of December Superintendent Viall requested me to accompany Mr. Black to his (Black's) hotel, as he (Black) had business with me. Upon arriving at the hotel, and while in Mr. Black's room, he (Black) first asked me if General Sully had ever purchased anything out of the $50,000 appropriation for this agency for 1870. I answered him I did not know. He then requested me to make out and sign vouchers in his (Black's) favor to the amount of forty-five thousand dollars for goods received at this agency. This I refused to do, and informed him (Black) that I would receipt for what goods came to this agency and no more. He then said that if I would sign said vouchers, Superintendent Viall would indorse them. I refused. He (Black) further said, that if I would sign such vouchers I should stay in office (as agent) as long as Grant was President, as he (Black) and Commissioner Parker were great friends.

On the next day (3d December) Superintendent Viall sent me twice to the hotel, (once in company with Black, and once by myself,) saying that "Black had business with me." Upon arriving at the hotel Mr. Black made the same request in regard to signing vouchers, which I again refused to sign, and never have signed. The five and one-half tons of goods mentioned arrived at agency while I was absent, as stated, but I returned in time to receive them.

You will observe that there are two *accusations* in this letter. 1st: That I attempted to have McCauley receipt for fifty tons of goods, when in fact but five and one-half tons were actually delivered to him, upon the penalty of losing his official head in case he refused. 2d. That I attempted to secure from him the issuance of vouchers to the amount of forty-five thousand dollars for goods not delivered by me nor received by the Government.

I think you will be satisfied from a statement of the facts to which I shall direct your attention, that the statements of this McCauley letter are utterly false, even without my assertion to that effect. He says I wanted to secure freight

money for fifty tons of goods, when I had, in fact, received and transported but five and a half tons. Did he not know that any attempt to perpetrate such a fraud would surely fail, because the Indian Department, to which the account must be presented for settlement, would have a complete record of all goods purchased and shipped on its account? So clumsy and stupid a fraud must therefore have been detected at once. I think I am safe in asserting that no such demand was ever made by Mr. Garrison or any one for him. It is certain I never made any such statement or suggestion to Mr. Garrison, or any one in his employ. Let us examine the next charge. You will not fail to observe that he fixes the time as December 2, 1870. It is true I did see McCauley at Helena, at about the time stated in his letter, but I made no propositions to him in regard to selling him goods or receiving vouchers from him. I *knew* that he had at that time no authority to purchase goods or issue vouchers for the Indian service, and for the sufficient reason that I had been informed of his suspension from office nearly six weeks before, to wit, on the 21st day of October, 1870. It is very clear that any voucher he could have issued at that time would not have been worth the paper it was written on. My experience of nearly eight years in doing business for the Government, would have been of little use to me if I had not learned in this time, that such a voucher, issued under such circumstances, would have been utterly worthless, because it would have come back to the officials, who had removed this man, for settlement and payment; but this man, McCauley, is not only a great *knave* but a great fool as well. If he had not been he would have *invented* a story, at least plausible on its face. His statements are so bunglingly made that they bear the evidence of falsehood on their face. McCauley forgets that he attempted to sell me goods, and that I declined to have anything to do with him, because he had ceased to be an Indian agent

or to have any authority to act for the Government in that capacity.

But this story is not new, for the substance of it appeared in "*The Patriot*," the organ of the Democracy here, on the 11th day of February, 1871. In that paper on that day, reference was made to the investigation then being made into the affairs of the Indian Department, and in speaking of the gross frauds perpetrated there, under the sanction of the department, it stated the following instance, to wit:

A contractor who had furnished merchandize for the Indians in Montana Territory, to the extent of $7,600, demanded that the Indian agent there, who happened to be an honest man, should sign vouchers for $54 000. He refused to sanction this robbery, which is of too general practice, and was removed from office, through the power of the contractors, brought to bear upon the Indian Bureau here in Washington.

Here it is charged that I wanted $54,000 instead of $45,000, which was more than the whole appropriation for all the Indians at the Blackfoot agency. It is evident that Cavanaugh inspired this article, and gave the information from which it was written. He must have known it was false *then*, as *he has admitted* to me since then that he was satisfied it was false. That it is false is shown by other evidence than my own. In the letter of Superintendent Viall to the Commissioner of Indian Affairs, dated February 28th, 1870, he states in regard to some of the statements of McCauley's letter, as follows:

Regarding McCauley's statement about his having received a letter from me to come to Helena, and to the conversation he says he had with me relative to Mr. Black, I have to say that no such letter was ever written by me, nor did the conversation referred to ever take place. As to the interview he claims to have had with Mr. Black, I have no knowledge, but I am of the opinion, from my knowledge of the two men, that there is not a word of truth in the statement of McCauley.

Both Mr. Cavanaugh and Mr. McCauley must be familiar with the legal maxim which declares that the testimony of a witness *false in one thing, is to be regarded as false in all things*. And with this suggestion I leave Mr. McCauley and his letter.

A word in regard to Mr. Cavanaugh, and I have done. I have shown that the charges he makes against me are each false and without the slightest foundation. My unpardonable offense seems to be that I attempted to corrupt that *honest* Indian agent, M. M. McCauley. How difficult a matter *that* would be is best shown by the affidavit of Hugh Kirkendall, hereto attached.

This controversy between myself and McCauley and Cavanaugh, has not been brought about by me. I did not begin it, and I only continue it in self-justification. I left Montana with the assurance from Mr. Cavanaugh, that he would do me complete though tardy justice in regard to this McCauley letter, by simply writing to the Commissioner of Indian Affairs what he knows and believes to be the truth in regard to the matter. He did not do that, but before I was fairly out of the territory he commenced his attacks upon me. I will not comment upon that degree of courage which only attacks a man when he is absent and unable to defend himself. You will fitly characterize such conduct as the extreme of cowardice, and not at all justified by honorable men.

Now I desire to add but a single suggestion. Mr. Cavanaugh is a candidate for re-nomination as your delegate to Congress. Would it not be well for you to ask from him some account of his stewardship during the past four years? Has he done anything of importance or useful to this people? Is he able to do anything for you in the future should he be elected? That he is dissipated you all know. That he is drunken and inattentive to his official duties here, six winters business in Washington have left me no chance to doubt. The people of Montana are

amongst the best in the world; they are a constituency of which any man may well be proud. Do you find Mr. Cavanaugh a worthy representative of that constituency?

My own experience with him as our delegate in Congress, justifies me in asserting that he neglects your interests, and is inattentive to your wants. If at any time I have been obliged to confer with him on business, I have been forced to hunt him in drinking saloons, where he is most frequently found, and most inclined to stay. There you must seek him if you have need of his services. *And when you find him he has his skin full* of whiskey, and is surrounded by loafers no better than himself, indulging in bitterest abuse of some of his constituents, instead of associating with gentlemen, who could best assist him in promoting your interests. I am sure you who have known me well since my residence amongst you, will be able to detect the falsehoods McCauley has invented and Cavanaugh circulated about me. I have no fear of the result of the issue those men have made, because the truth must always prevail, and will in the end bring me just vindication.

L. M. BLACK.

Affidavit of L. M. Black.

TERRITORY OF MONTANA. }
County of Lewis & Clarke. } *ss.*

On this thirty-first day of March, A. D. 1871, personally appeared before me, the undersigned, clerk of the court of the third judicial district of the territory of Montana, in and for Lewis & Clarke county, Leander M. Black, personally well known to me, who, being first duly sworn, deposes and says: I am a resident of the territory of Montana, and am engaged in mercantile and freighting business; have often taken Government contracts for furnishing supplies and freighting goods.

In the summer of 1870, I entered into a contract with

the Commissioner of Indian Affairs for freighting the Indian goods for the Indians of Montana territory from Corinne, on the Central Pacific railroad, to the various Indian agencies in the Montana territory, for which I received one dollar and fifty cents ($1.50) per one hundred (100) pounds per one hundred (100) miles, which is less than was paid by the War Department for transporting military supplies over the same route that year. I sublet this said contract to Messrs. Garrison & Wyatt. They, acting as my agents, received and receipted for the said goods at Corinne, delivered them at the several agencies, and took the receipts of the agents in charge therefor. I received about forty-eight hundred dollars ($4,800) from the Interior Department at Washington for fulfilling the said contract, out of which amount I paid Garrison & Wyatt about forty-seven hundred dollars ($4,700) for fulfilling their said contract in freighting said Indian goods under me.

In reference to the statement contained in M. M. McCauley's letter to the Hon. Commissioner of Indian Affairs, bearing date February 13th, 1871, wherein it is alleged that the wagon master of Garrison's train, who delivered the annuity goods to the Blackfoot agency, told Mr. McCauley, that Mr. Garrison had received from me one-half of the freight money on fifty (50) tons of annuity goods from Corinne to the Blackfoot agency, and that if he (McCauley) did not receipt to me for the full amount, he (McCauley) would lose his head; I have to say that about five and one-half (5½) tons of annuity goods were received by me, through Garrison, at Corinne, and delivered to Blackfoot agency to McCauley, who was in charge; that no conversation between Mr. Garrison and myself in relation to freight money on fifty (50) tons of goods for Blackfoot agency ever took place, and no transactions have ever occurred between us in relation to said goods or freight, other than those hereinbefore stated; nor do I believe Mr. Garrison ever made or authorized any such statements as are charged in McCauley's letter.

On or about the first of December, 1870, I met M. M. McCauley in Helena, who informed me that he wished to have a large lot of provisions purchased and delivered at his agency; that he desired me to do the business, and that he would issue vouchers to me therefor. I told him that my understanding was that he had been removed

from office, and that his vouchers for the purchase and delivery of supplies would be worthless. He replied that he had matters all right at Washington, which is all the conversation I ever had with him on the subject.

The statements contained in the said letter of McCauley, before referred to, in reference to my making propositions to him, requesting him to sign vouchers in my favor to the amount of forty-five thousand dollars, ($45,000); that I would procure his retention in office by his so doing, and in regard to allusions made by me concerning the President or the Honorable Commissioner of Indian Affairs, are wholly untrue and false.

LEANDER M. BLACK.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at Helena, M. T., this 31st day of March, A. D. 1871.

[SEAL.] W. S. SCRIBNER,
Clerk.

Affidavit of Hugh Kirkendall.

TERRITORY OF MONTANA, } ss.
County of Lewis and Clarke. }

Hugh Kirkendall, being first duly sworn, deposes and says: My name is Hugh Kirkendall; I am thirty-five years of age, and am engaged in the freighting business in the territory of Montana; I own and work three hundred (300) head of mules and sixty (60) wagons; have followed the business of freighting for the past ten (10) years, and have frequently freighted Indian goods. On or about the first day of December, A. D. 1870. I met M. M. McCauley, United States agent for the Blackfeet Indians, at the office of Superintendent Viall, in Helena, Montana territory. While in the said office I heard a conversation between the said McCauley and others, in reference to some flour and other supplies to be freighted to his agency.

On the following day I met the said agent, McCauley, in a saloon and at his request I took a walk with him, he stating that he wished to have a private talk with me.

We walked out alone, and McCauley informed me that

he had made a requisition on the superintendent for a large lot of provisions for the Blackfoot agency; that he desired I should freight them; said he was afraid to talk with L. M. Black or Superintendent Viall, because they were old fogies; that he wished to effect a private arrangement with me about the goods; that he would not want but a small portion of the amount purchased delivered at the agency; that he wished me to receipt for and take the whole amount from the superintendent, and leave part of them on the way at a place he would thereafter designate, and that he would receipt to me for the delivery of the whole amount; that the goods so left he would cause to be disposed of and sold, and that he would divide the proceeds of such sale with me. He said it might be better to send all of the goods to the agency and send a portion of them back by the same train.

I replied to McCauley, that if I was employed to do the freighting, he was the agent and I would as a matter of business deliver the goods whereever he directed me so to do.

My understanding from this conversation was, to the effect that Agent McCauley desired to sell a portion (one-half or more) of the provisions about to be purchased for the use of the Blackfeet Indians, and to appropriate the proceeds of such sale to his own use and benefit; and that if I would deliver the goods at such point or place as he should designate, he would divide with me and give me one-half of the profits of the transaction.

HUGH KIRKENDALL.

TERRITORY OF MONTANA, } *ss.*
County of Lewis and Clarke. }

Personally appeared before me, W. S. Scribner, clerk of the third judicial district court of the territory of Montana, in and for Lewis and Clarke county, Hugh Kirkendall, well known to me to be the person who executed the foregoing instrument of writing, and acknowledged to me that he did the same freely and of his own accord, and upon oath said that the same was true and correct of his own knowledge.

Witness my hand and the seal of said court affixed, Done at Helena, this twenty-seventh day of March, A. D. 1871.

[SEAL.]

W. S. SCRIBNER,
Clerk.